19-41

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~330~~ 123

WILLIAM T. FRASER, PLAINTIFF IN ERROR,

vs.

THE PROPELLER WENONA, ETC., WILLIAM G. FARGO, SHELDON PEASE, AND ELISHA A. BUCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED JANUARY 15, 1872.

1 Circuit court of the United States for the northern district of New York, in admiralty.

WILLIAM T. FRASER, LIBELLANT AND APPELLEE,
vs.
THE PROPELLER WENONA, WILLIAM G. FARGO, Sheldon Pease, and Elisha A. Buck, claimants and appellants.
} Appeal from the district court of the United States for the said district.

1869, Dec. 13. Libel filed in district court.
1870, Feb. 12. Bond on release.
June 1. Decree and order of reference.
Oct. 28. Commissioner's report filed.
Nov. 4. Final decree.

2

3 *Warrant of arrest and monition.*

UNITED STATES OF AMERICA,
Northern District of New York, ss:

[L. S.] The President of the United States of America to the marshall of the northern district of New York, and to his deputy, whomsoever, greeting:

You are hereby jointly and severally empowered and strictly enjoined and commanded, that you arrest the vessel called the "propeller Wenona," (whereof O. B. Joiner now is, or late was master,) her boats, tackle, apparel, and furniture, if she shall be found within your district; and the same so arrested you keep under safe and secure arrest, until you shall receive further orders from the said court, or the same shall be discharged in due course of law; and that you cite at the premises all persons in general, who have, or pretend to have any right, title, or interest therein, to appear before the judge of the district court of the United States of America for the northern district of New York, at the city of Buffalo, on the 4th day of January, 1870, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon, there to answer unto William T. Fraser, libellant, in a cause of collision, civil
4 and maratime; and further to do and receive in this behalf as to justice shall appertain; and that you duly certify the judge of the aforesaid court what you shall do in the premises, together with these presents.

Witness the Honorable Nathan K. Hall, judge of the aforesaid court, at the city of Buffalo, this thirteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Action for $16,870.00.

M. P. FILLMORE, *Clerk.*

B. H. WILLIAMS,
Proctor.

Marshal's return.

In obedience to the within writ, I did, on 13th day of December, 1869, arrest the within mentioned propeller "Wenona," her tackle, &c.; and I duly cited all persons to appear as within commanded.

Dated the 4th day of January, 1870.

ISAAC F. QUINBY, *U. S. Marshal.*
LEVI H. WILLIAMS, *Deputy.*

(Endorsed:) No. 1831. District court of the United States for the northern district of New York. William T. Fraser vs. Propeller "Wenona," her tackle, apparel & furniture. Warrant of arrest and monition. For $16,870.00. B. H. Williams, proctor. Notice to be published 3 times in the Buffalo Commercial Advertiser. Original filed 4th day of January, 1870.

5 Know all men by these presents that we, William G. Fargo, and Sheldon Pease, all of the city of Buffalo, are held and firmly bound unto William T. Fraser, of the same place, in the sum of thirty-three thousand four hundred and ninety dollars, lawful money of the United States of America, to be paid to the said William T. Fraser, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated the 9th day of February, one thousand eight hundred and seventy.

Whereas in a certain cause of collision, civil and maratime, moved and prosecuted in the district court of the United States of America for the northern district of New York, on behalf of the above obligees, against the ship or vessel called the Wenona, her boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said ship or vessel, boats, tackle, apparel, and furniture, in virtue of which said warrant the said ship or vessel, her tackle, apparel, and furniture have been arrested by one of the deputies of the marshal of the said district, and are now in his custody:

Now, therefore, the conditions of the above obligation *is* such, that if the said William G. Fargo, Elisha A. Buck, and Sheldon Pease,
6 the claimants of the said ship or vessel, her boats, tackle, apparel and furniture, shall well and truly abide and answer the decree of the court in the aforesaid cause, without fraud or other delay, then the above obligation to be void; otherwise it shall remain in full force and virtue.

WILLIAM G. FARGO. [ ]
SHELDON PEASE. [ ]

Sealed and delivered in presence of—

STATE OF NEW YORK,
Northern District of New York, Erie County, ss:

I hereby certify that, on this 11th day of February, 1870, before me came the above-named William G. Fargo and Sheldon Pease, to me known to be the same persons described in, and who executed the above bond, and acknowledged that they had executed the same.

G. T. MIATT,
Notary Public for Erie County.

STATE OF NEW YORK,
Northern District of New York, Erie County, ss:

7 William G. Fargo and Sheldon Pease, of the city of Buffalo, in the said district, being duly sworn, each for himself says that he is a householder and resident of the said district, and that he is worth thirty-five thousand dollars, after all his debts and liabilities are paid and satisfied.

W'M G. FARGO.
SHELDON PEASE.

Sworn before me, this 11th day of February, 1870.

G. T. MIATT,
Notary Public.

8 (Indorsed:) No. 1831. Bond. In admiralty. District court of the U. S., northern district of New York. William G. Fargo and others to William S. Fraser. William S. Fraser vs. Propeller "Wenona." Original filed Feb. 12, 1870.

I hereby receive sureties to within bond and consent to approval of same by judge, as same is executed by William G. Fargo and Sheldon Pease, and consent to discharge of property on bond being filed.

Feb'y 12, 1870.

BENJ. H. WILLIAMS,
Proctor for Libellant.

On filing this bond the clerk will enter order discharging the property.

N. K. HALL.

FEB'Y 12, 1870.

9 *Libel.*

United States district court, northern district of New York. In admiralty.

To the Honorable Nathan K. Hall, judge of the United States district court for the northern district of New York:

William T. Fraser exhibits this his libel against the propeller Wenona, whereof one O. B. Joiner is, or lately was, master, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maratime; and thereupon the libellant does allege and articulately propound as follows:

First. That the libellant, during all the times in this libel mentioned, did reside, and thence hitherto has resided, and still resides, at the city of Buffalo, in the State of New York.

Second. That, during all the times in this libel mentioned, the said propeller Wenona and the schooner Freemont, hereinafter mentioned, were, and each of them was, and thence hitherto has been, and is, a maratime vessel of more twenty-five tons burthen, enrolled and licensed for the coasting-trade, and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable waters connecting the said lakes, within
10 the true intent and meaning of the act of the Congress of the United States of America, entitled "An act extending the jurisdiction of the district courts to certain cases upon the lakes and navigable waters connecting the same," passed February 26, 1845.

Third. That, during all the times in this libel mentioned and referred to, this libellant was the sole, true, and lawful owner of a certain schooner called the Freemont, and no other person was the owner thereof, or interested therein; which said schooner was of the burthen of about two hundred and eight tons, and employed in the business of commerce and navigation upon the lakes.

Fourth. That, said propeller Wenona now lies at the port of Buffalo, within the said northern district of New York.

Fifth. That, on the 29th day of November, 1869, the said schooner

Freemont was proceeding up Lake Erie, bound on a voyage from the port of Oswego, in the State of New York, to the port of Sandusky, in the State of Ohio, and laden with a cargo of salt; and, on the day last afore said, when on her said voyage on Lake Erie, and near the middle of said Lake, and on or about nine o'clock in the evening, the mast-head light of said propeller Wenona was first discovered by those in charge of the said schooner Freemont.

11 That said mast-head light as first discovered, was nearly ahead of said schooner, and apparently about a mile and a half distant; that said schooner was then moving southwest-by-west, one-half west, and was good full and by the wind, and was moving at a speed of between five and six miles an hour.

That, at that time, there was upon the deck of the Freemont, William T. Stone, the first mate of said schooner, who was in charge of the deck; William Lewis, a seaman, who was acting as look-out, and John Lillis, a seaman, who was at the wheel. That, at the time when the light of the Wenona was first discovered as aforesaid, and from thence until the collision hereinafter mentioned, the said schooner had both a red and green light, both brightly burning, and of the kind and description which vessels of the description of the schooner Freemont are required by law to carry, to wit: On the starboard side a green light so constructed as to throw an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed on said schooner as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night with a clear atmosphere, at a distance of at least two miles; and

12 on the port side a red light so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed on said schooner as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night with a clear atmosphere, at a distance of at least two miles.

That said green and red lights were each fitted up with inboard screens, projecting at least three feet forward from the light, so as to prevent those lights from being seen across the bow.

And said lights were, during all of said time, placed on said schooner in the respective places, and in the manner respectively required by the laws of the United States, applicable to vessels of the kind and description of said schooner.

That, as soon as the mast-head light of said propeller was discovered as aforesaid, those in charge of said schooner caused to be lighted and conspicuously displayed, and swung on the deck of said schooner, a torch, in order to attract the attention of those on board said propeller, and those in charge of said schooner kept said torch lighted, and caused the same to be swung and waved as aforesaid, until on or

13 about the moment of the collision hereinafter mentioned.

That, after said mast-head light was discovered as aforesaid, the said schooner Fremont kept on her said course, and very soon after the red and green lights of said propeller were discovered ahead of said schooner, and were apparently about one mile ahead of said schooner; that said schooner kept on her course, and, a few minutes afterward, the hull of said propeller was discovered on the port bow of said schooner, and said propeller seemed to be crossing the bow of said schooner, and the said propeller continuing to approach said schooner with great velocity, and a collision being inevitable, and said propeller being about to run down said schooner, the master of said schooner, to lessen the

force of the blow, ordered the helm of the Fremont to be put to port.

That said propeller immediately thereafter, struck with her stem the port side of said schooner, and on the weather bow, at an angle of from eight to ten points, staving in the bow, and smashing the planks and timbers of said schooner, and so injuring the said schooner, that, in consequence of such injuries, the said schooner Fremont, her tackle, apparel, and furniture, and with her cargo on board, was sunk
14 and totally lost on Lake Erie, about an hour after such collision took place.

That said collision took place about nine o'clock in the evening, in about the middle of Lake Erie, and about thirty miles from Fort Stanley; that the weather at the time was hazy, with rain, and the wind was blowing from the south about a six-knot breeze.

That said schooner, at the time of the collision, was running at about the rate of from five to six miles an hour, and the said propeller at about the rate of eleven miles an hour.

That no effort was made on the part of those on board said propeller to avoid a collision, so far as could be discovered by those on board of said schooner.

That, at the time of the aforesaid collision, the said schooner Fremont was tight, staunch, and strong, and well and sufficiently manned and provided, and was in command of your libellant; and that said collision took place without any fault or negligence of the master or any of the officers or crew of said schooner, and solely in consequence of the negligent and improper conduct of the master and those in charge of said propeller Wenona.

That, in consequence of said collision, the said schooner Fremont,
15 of the value of ten thousand dollars, was sunk, and wholly lost to your libellant.

That, at the time of said collision, this libellant had aboard of said schooner a cargo of twenty-two hundred barrels of salt, which was being transported on said schooner, from Oswego aforesaid to Sandusky aforesaid, at the freight of thirty cents a barrel, and the freight of which amounted to the sum of six hundred and sixty dollars; which said freight in consequence of the sinking of said cargo as aforesaid, was wholly lost to this libellant.

That this libellant had also on board of said schooner, clothing, tools, nautical instruments, and other property belonging to him, said libellant, of the value of three hundred and fifty dollars; which said clothing, tools, nautical instruments, and property, were, in consequence of said collision, sunk and lost with said schooner, and were wholly lost to this libellant.

Sixth. That, at the time of said collision this libellant had on board of said schooner a cargo of twenty-two hundred barrels of salt, which he was transporting on said schooner, from said port of Oswego, to said port of Sandusky under a bill of lading, of which the following is a copy:

"OSWEGO, *Nov.* 19, 1869.

16 "Shipped in good order and well conditioned by the Salt Company of Onondaga, forwarder, for account and risk of whom it may concern, on board the schooner Fremont, , master, now lying in the port of Oswego and bound for Sandusky, the following articles, marked and numbered as in the margin, and which are to be delivered in like good order and condition (the dangers of navigation, fire, and

collision excepted) without delay, unto consignees or assigns, he or they paying freight or charges.

"In witness whereof the master of said schooner hath signed three bills of lading of this tenor and date, one of which being accomplished the others to stand void.

"On deck, at vessel's risk, 410 barrels fine salt.
"Account of Salt Company of Onondoga, Syracuse, N. Y.
"Care Fitzling & Foster, Sandusky.
"2,200 bbls. fine salt. Fr't 30c. bb. $660.

"H. M. HARMON, *Agt.*
"D. G."

That the aforesaid cargo of salt was of the value of five thousand six hundred and ten dollars, and said cargo was, in consequence of said collision, sunk with said schooner and wholly lost.

Seventh. That the whole damage sustained as aforesaid, by reason of said collision, including the loss on said cargo as aforesaid, was, and is, the sum of sixteen thousand six hundred and twenty dollars; for which sum this libellant claims that he has a lien upon said propeller Wenona, her engine, machinery, boats, tackle, apparel, and furniture.

17 Eighth. That all and singular the premises are true.

Wherefore the libellants prays that process in due form of law may issue against the said propeller Wenona, her engine, machinery, boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the aforesaid claim and demand, and decree the same to be paid with costs; and for such other and further relief as to right and justice may appertain, and as the court is competent to give in the premises.

WILLIAM T. FRASER.

BENJ. H. WILLIAMS,
Proctor & Advocate.

STATE OF NEW YORK,
Northern District of New York, County of Erie, ss:

On this 13th day of December, 1869, personally appeared before me, William T. Fraser, the above-named libellant, and was sworn to the truth of the foregoing libel.

M. P. FILLMORE,
U. S. Com'r.

18 (Indorsed:) No. 1831. United States district court, northern district of New York. In admiralty. William T. Fraser vs. Propeller Wenona. Libel. Claim, $16,620.00, and interest from Benj. H. Williams, proctor for libellant. Original filed Dec. 13, 1869.

19 United States district court, northern district of New York. In admiralty.

To the Honorable Nathan K. Hall, district judge, &c., &c.,

The answer of Sheldon Pease, William G. Fargo, and Elisha A. Buck, respondents, to the libel of William S. Fraser, against the propeller Wenona, her tackle, &c. The said respondents answer and allege as follows:

First. The said respondents are, and, during all the times herein

mentioned, were, the true and bona-fide owners of the said propeller, and no other person has, or during said times had, any interest therein.

Second. The respondents admit the allegation of the first article of the said libel to be true.

Third. The respondents admit the allegations of the second article of the said libel, as to the character as a maratime vessel, the burthen, enrolment, license, and employment of the said propeller, to be true; and the allegation as to the burthen of the schooner therein mentioned.

The respondents are ignorant as to the other allegations of said article, and therefore deny each of such allegations, and demand proof thereof.

20 Fourth. The respondents are ignorant as to each and all the matters alleged in the third article of the said libel, and therefore deny each and every allegation in said third article contained, and demand proof thereof.

Fifth. The respondents admit the allegation of the fourth article of the said libel to be true.

Sixth. The respondents admit that, on the 29th day of November, 1869, the said schooner was on Lake Erie, and that, in the evening of that day, the said propeller and the said schooner came in collision, and that, after said collision, the schooner sunk. The respondents deny that the signal-lights of the schooner at any time in the fifth article of said libel referred to were good, sufficient, or brightly burning, or of the kind or description, or placed or constructed as is in said article mentioned. The respondents deny that the helm of the schooner of the Fremont was put to port so short a time before the collision, or for the purpose as is alleged in the said article.

The respondents deny that no effort was made on the propeller to avoid the collision; and they deny that the collision took place without any fault or negligence of the master or any of the officers or crew of the schooner; and they deny that the collision took place in con-

21 sequence of any negligent or improper conduct of the master or of those or any of those in charge of the propeller.

The respondents are ignorant as to the allegations in said article contained, not in this answer expressly denied or expressly admitted, and they therefore deny each of such allegations not so expressly denied or expressly admitted, and demand proof thereof.

The respondents aver that many things in the said article are untruly alleged and plead, and they expressly deny each allegation in the said article inconsistent with the subsequent allegations of this article of this answer.

The said respondents allege:

That, on the evening of the 29th day of November, 1869, the said propeller was upon Lake Erie, engaged in the performance of a voyage from Chicago, in the State of Illinois, to Buffalo, in the State of New York. The wind was about south-south-east; it was cloudy but there was no fog. The propeller, at the times in this article referred to, carried, properly displayed, placed, fixed, and secured, the signal-lights required by law, which were exhibited according to law, and were, in all respects, good and sufficient signal-lights, and were brightly and properly burning and showing; that the said propeller, at said times, carried

22 and had good and sufficient look-out, attentive to duty. There were on duty on said propeller, at said times, the master of the propeller, Oscar B. Joiner; Edward M. Marion, her second mate; George Montgomery, wheelsman; Ronald McDonald, look-out; and William Given, first engineer.

The propeller was proceeding on a course east, three-quarters north. While so proceeding a flash-light was made from the propeller, apparently at a considerable distance off, but how far the respondents are unable to state precisely—about half a point on the propeller's port bow. The flash-light appeared alone a short time, when a green light (which afterward proved to be on the said schooner) was seen from the propeller dead ahead or nearly so. The wheel of the propeller was put astarboard, and she swung and continued to swing to port. The green light opened on the propeller's starboard bow. Afterwards the green light of the schooner disappeared, and her red light became visible. The wheel of the propeller was put hard astarboard, and her engine was stopped and backed, and soon afterwards the propeller and schooner came in collision; the schooner striking the propeller on the propeller's
23 starboard bow at an angle the respondents are unable to state precisely.

The collision, thus happening, is the same collision in the said libel referred to, and it happened and was caused without any fault or negligence on the part of the said propeller, or of any one on board of her, and without any want of care, and without any want of skill on the part of any one on board of her, and happened, and was caused entirely by fault, negligence, and want of care, and want of skill, on the part of the said schooner, and of those on board of and navigating her; and, among other things, as the said respondents aver, for the reason that the course of the said schooner was improperly changed before the collision; that she had not good or sufficient look-out; that she had not good or sufficient signal-lights, nor were the same properly placed, or fixed, or constructed; that the said schooner was improperly navigated and managed.

Seventh. The said respondents are ignorant as to each and all the matters in the sixth article of the said bill referred to. They therefore deny each and every allegation in the said article contained, and demand proof thereof.

Eighth. The respondents are ignorant as to each and all the matters in the seventh article of the said libel referred to, (except
24 such as are herein specifically denied,) and therefore deny each and every allegation in said article contained, and demand proof thereof.

The respondents deny that the damage, caused by the said collision, was as great as is alleged in said article. The respondents say that such damage was a much smaller sum, but how much smaller, the respondents are unable to state. The respondents deny that the said libellant has any lien on account of any matters in said libel referred to.

Ninth. The respondents deny that, all and singular, the premises in the eighth article of said liable referred to, are true, and allege that many matters in said libel contained are therein untruly alleged and pleaded.

And hereupon the said respondents pray that the said libel may be dismissed with costs, and that the said respondents may have such other relief or decree as may be proper in the premises.

SHELDON PEASE.
WILLIAM G. FARGO,
By SHELDON PEASE.
ELISHA A. BUCK,
By SHELDON PEASE.

GEORGE B. HIBBARD, *Proctor.*
GEORGE B. HIBBARD, *Advocate.*

25 NORTHERN DISTRICT OF NEW YORK,
City of Buffalo, ss :

Sheldon Pease, being duly sworn, says he is one of the respondents named in the foregoing answer, and that the said answer is true, according to deponent's knowledge, information, and belief.

SHELDON PEASE.

Subscribed & sworn before me this tenth day of January, 1870.
GEO. GORHAM,
United States Commissioner, Northern District of New York.

26 (Indorsed:) No. 1831. U. S. district court, northern dist. of New York. In admiralty. William S. Fraser vs. The Propeller Wenona, her tackle, &c. Answer. George B. Hibbard, proctor for respondents. Buffalo, N. Y. Original filed January 12, 1870.

27 U. S. dist. court, nor. dist. New York.

WILLIAM T. FRASER
vs.
PROPELLER WENONA, SHELDON PEASE, et. al., claimants. } Ap'l 22, 1870.

Minutes of testimony.—Libellant's witnesses.

WILLIAM LEWIS, sworn:

I live in Rockland, Maine. I was on the Fremont last fall; was on her at the time of the collision with the propeller Wenona; was seaman; had followed sailing 15 years—4 years on the lakes, balance on the ocean; am 28 years old; was on duty at the time the collision took place; came on duty at 8 o'clock. I was on the look-out. The mate, Mr. Stone, and George Lillis were on duty at same time. I was forward on the vessel. I saw propeller light; first saw bright light right ahead. I then reported it to officer of deck. He answered. He told me he saw it. The next I see was both her red and green light. When I saw them I reported there was a steamer ahead to mate. He lit the torch. I kept watch of the lights. They appeared to me right ahead. They seemed,
28 if anything, to be gaining a little—if anything, to the windward—until they opened out to our port-bow. This was weather-bow. The next thing I could see they seemed to be coming down on to us. I kept watch of her all the time. Then I called the men below and told them to come on deck and look out for themselves. She struck us on the port-bow between the fore-rigging and anchor-stock. At the time she looked as though she was coming down upon us she was not more than three times her own length from us, and perhaps not that. We had signal-lights on our vessel. They were red and green lights. They were placed both on the paul-bit. There was a board between them extending forward of them four feet. They were burning brightly at the time. Between ½-past 8 and 9 that night, it was cloudy and hazy. When the propeller appeared to be bearing down on us she was a little on our port-bow. She could not have been over a point. Her green light shot in for a short time. That was just before she looked as if she was bearing down upon us. Then they both opened out brightly. That is all till the collision happened; could see the hull of the propeller before she struck us. I should say she had her full head of steam on the way she was

coming. She was under way. She was coming stem or head on. The wind was about south. Our course was southwest-by-west half
29 west. We were nearly close-hauled. The torch was lit twice.

X'd:

Have been four seasons on the lakes in capacity of seaman; never as mate on lakes; have on salt water. The collision was in Lake Erie off Port Stanley. I went on watch that night at eight o'clock. The mate, Mr. Stone, and Lillis came on with me; first saw bright light; was standing forward then. We had all our canvas set. She is a schooner. We had three jibs. The mate, man at the wheel, and I were on deck when first saw bright light; mate was then aft. Our course was then southwest-by-west half west. I did not look at the compass. I could not swear that she was on that course at that time. I know she had been on that course all day. I would not swear within twelve points of her course at the time. She had a good full on and continued to have a good full on to the time of the collision; it might have been 4 or 5 minutes before collision that saw bright light; that is as near as I can give it; it might have been more or less; could not have been many minutes more; do not know whether Fraser, the cap., was on deck at the time; saw him before collision on deck; could not have been more than a minute or two after seeing bright light when saw all lights; heard no order to man at wheel to change course. I was forward
30 all the time. The mate was aft. There was no one forward but myself; continued to see the lights dead ahead a minute or two, and then they were slightly on our port-bow; they got onto our port-bow perhaps a point, may be a point and a half; as far as I know, between a point and point & a half; could then see the red and bright light and not the green; this could not have been over two minutes before the collision; that is as near as I can give the time. I hollered out to the officer on deck. Fraser was not then on deck that I know of; saw no one but mate and man at wheel; torch was lit twice by mate. She showed it on her lee-side aft. I do not know whether he showed it to windward; know he showed it twice to leeward; do not know that he showed it more; do not know whether he held it up. It was after I reported the lights; do not know whether after reporting mast-head lights or after reporting all of them. I am sure he showed it twice. I do not know whose make our lights were. They were two separate lights with a board between and behind. The board between I never measured; must have been 4 or 4½ feet long. The paul-bit might be 15 feet from the stem, perhaps more. I saw no drinking aboard the vessel that night, and had not for two weeks.

WILLIAM P. STONE:

31 Live in Buffalo. My business is sailing; have been in that business 28 or 29 years; was on Fremont, at time of this collision, in capacity of mate; had been on her since the opening of navigation. It was my watch from 8 to 9 of the evening of the collision. I came on at 8. W'm Lewis and John Lillis were on watch with me. Lillas was man at the wheel. I looked at the compass that night; the course then was so' west-by-west ½ W. The wind was about south. We had red and green lights. They were placed on the paul-bit. I do not know whose make. They were N. Y. make. They were burning bright at the time of the collision. There was nothing in front to secrete the lights from any approaching vessel. It was a hazy night, clouded. I saw the light almost the same time the man forward reported it. I was walking across

the quarter-deck to leeward and could see it under the main boom. It bore a very little on the leeward of right ahead when I first saw it. I lit the torch-light. I passed it to the captain in the cabin and requested him to light it, and he did, and returned it. I held it up to the leeward. I stood in the passage-way, between corner of cabin and rail, which is about 3 to 4 feet, and held the light above my head. This torch was
32 turpentine. It burned probably 2 to 3 seconds. I had seen no colored lights on the propeller when I held this torch up. After the first torch burned out I saw the green light and the mast-head light of the propeller. I passed the torch back into the cabin to get it lighted a second time. When I saw it was a propeller's light I passed the torch in to get it lighted a 2nd time. I told the man at the wheel not to let her fall off. He said all right, or something to that effect. When passed in torch again, it was lighted, and I swung it the same as before. I stood to leeward, in the same place. The propeller lights appeared then right ahead. I saw all three of his lights after the 2nd torch-light. I kept looking at propeller. She appeared to haul to windward of us so as to shut in her green light from us, and then she was that close to us that I could discern the whole of the boat. Then he seemed to starboard his wheel so as to shut in his red light, and opened his green light the 2nd time; and almost immediately after we collided. Capt. Fraser came on deck before the vessel struck. The capt. came on deck just as the 2nd torch was lit. Whether the capt. or steward lit the torch I cannot say. It was one or the other. The propeller was then pointed right to us. The capt. was standing on quarter-deck, right by the wheel. The
33 propeller was pointed right to us when capt. came on deck. The schooner's course had not been changed from the time I saw the bright light till the time the capt. came on deck. When the propeller was standing right over us the capt. gave the order to man at wheel to hard-aport. The propeller was then, I should think, not more than half her length from us. I saw her plain—some lights in her cabin window—we standing same as we had been till the order came to shift the wheel. The wheel was shifted before the propeller struck us. It could not have been more than two or three seconds when the order was given by the capt. I jumped to ease off the main sheet. The wheelsman could not have taken but two turns of wheel when collision occurred. I had let off the sheet 4 or 5 feet, & then the blow came and knocked me flat on the deck. She hit our vessel forward, between the cat-head and fore-rigging. I think the propeller was under full headway from the rate she came towards us. I heard a bell on her just before the collision. I cannot tell what the bell was for. The schooner sunk. We were from Oswego for Sandusky. The collision took place abreast of Port Stanley, near the middle of the lake.

34 X-'d:

Have been 13 years on lakes; had no interest in Fremont; was acting as mate; Capt. Fraser gave this order to wheelsman; was standing to the side of quarter-deck when first saw bright light; wind was south; our course was southwest-by-west ½ west. I know that from compass. The Fremont will lay within four points of wind; She was 4½ points of wind that night. She had been on that course since little after 8. I had known she was on that course ½ hour or more. She kept on that course down to the time capt. changed it. I am swearing from what I knew of the compass course, and there is no possibility of my being mistaken, from the time of making bright light. I looked at compass at the time of walking back, after showing 1st torch. To the best of my knowledge, it was 6 or 7 minutes, after seeing bright light to the time of the collis-

ion; was standing on lee-side of quarter-deck when saw bright light. It bore a little on starboard bow, if anything. It bore not more than ¼ point, if as much. It was inside of a mile I should judge. The look-out was forward at that time. We were carrying all sails: not light sails aloft. The sails were off on starboard side. I did not go below to get torch. I took it from the deck and handed it to capt. I asked him to light, and did not leave the deck. I could
35 not see any light when torch was burning. When it went out saw mast-head light, and green light of propeller. This was 5 or 6 minutes before the collision. Then passed right off and got torch lighted again as soon as I saw the side-light. I knew it was a steamer. The capt. was either on deck or in the act of coming out when second torch was lighted. When 2nd torch was lit could see all three of propeller's lights bearing right ahead; could not tell what propeller's course was; should judge east-by-north, or east ¾ north; should judge she was not more than east-by-north. We were going southwest-by-west ½ west, and we saw these lights as I have stated. Schooner had a good full on for a vessel by the wind. She was kept off ½ point about 8½ o'clock. Somewhere near that time she was kept off to give her a good full. That was Capt. Fraser's order. I was then forward. I was 4 or 5 minutes forward; was not doing anything particular; did not look at my watch at the time of the order. At the time 2nd torch went out was a minute or two before collision. Then she got onto our port-bow. She must have put her wheel a-port. She must have done it to get to windward of us. She shut in her green and showed her red light. Then she must have put her wheel astarboard to cross our bows. If we had put our wheel a-port the steamer would have presented
36 the same appearance to us. We got no signal-light of the propeller on our port-bow more than 1 point or 1¼ point to the most. When 2nd torchlight went out it was not to exceed a minute before collision. Capt. Fraser was either on deck or coming on deck when 2nd torchlight went out. Under the order from Fraser to put the wheel hard-a-port, schooner could not have swung more than a point or a point and a half before collision. There was not, in my judgment, time enough after 2nd torchlight went out for propeller to swing more than 1½ points at most, if she had then put her wheel to starboard. She was to exceed a length from us, should think, when she shut out the red and showed the green light the last time. These boats came together very near a right angle between the two stems. That collision happened somewhere about nine o'clock in t e evening. I was standing to windward of man at wheel when capt. gave order to hard-aport. I saw man put it up, and I jumped for sail. The propeller's stem first struck. It struck between fore-rigging and cat-head. I said nothing else to man at wheel after seeing mast-head light, except not to let her fall off. I heard capt. ask man at wheel what course she was on. I know he answered. What he said I cannot say. I cannot say whether
37 he said she was on course, or repeated the course. I know he answered as to course. I was busy about something else, and did not notice the answer. I heard the bell on the propeller; heard no hail from her; cannot say whether any hail on our schooner. When Capt. Fraser gave order to put wheel hard up, or hard-aport, the propeller c'd not have been more ½ her length or length from us; saw no drinking aboard our boat that night.

Redirect:

Our sails were trim to the wind. We were good full and by. No more than to keep her sails from shaking.

2½ P. M.

JOHN LILLAS:

Live at Toledo, Ohio; was on the Fremont at the time of the collision with Wenona; was there as seaman; was on lakes last 10 years; been on ocean 3 years; was on duty at time of collision, at the wheel; commenced at wheel few minutes after 8 o'clock. The course of vessel when I took wheel was southwest-by-west. It was changed about half an hour after. An order was given by Capt. Fraser by which that change was made. He told me to keep her off
38 half a point. I did so. That brought her course southwest-by-west-half-west. After the lookout reported light, I saw the light of the propeller. It was a bright mast-head light. Our course, southwest-by-west half west, was taken before we saw that light, perhaps 10 or 20 minutes before I saw red and green lights on the propeller. I guess we *was* southwest-by-west half west when the vessels came together, perhaps a point to leeward of that. She might be going west-by-south ½ south. That change was made when the capt. sung out to put the helm up. When I got that order from the capt. we were, perhaps, half her own length from the propeller. When I got that order the propeller was off our port bow, heading about midships for us. If the capt. had not told me to put the helm hard up, she would have struck us at aft the fore-rigging. I had put the helm hard-aport. I had got it fully over. No other change was made in the course of our vessel from the time the white light was reported down to the collision. I put the helm hard-aport under capt.'s order. When the vessels struck it capsized me over the spindle of the wheel. It punched a hole through us. It shoved us round so that the canvas jibed over on the other side.

X'd:

Have been on the lakes about 10 years; have been a boy when
39 first shipped; have never been mate, or 2nd mate; have been in the habit of steering about 10 years; the wind that night was south, as near as I could judge; about a six-knot breeze. The vessel was put on this course so'w', by W. ½, by capt's order. I was on deck at time of collision, and mate, and look-out ; mate was walking quarter-deck, near me. It was about 8 minutes before collision, should judge, saw this bright light; saw torch-light shown on our vessel. It was shown on lee-side, abaft the house; heard the look-out report the light, and could see it under main boom. It appeared ½ point on our starboard bow. Our signal-lights were on the paul-bit. They were burning good, so that I could see the reflection; do not know which was the best—about alike. Nothing was said to me at the time of making this light. The first other light I saw of the propeller, I think I saw the three together. They bore about ½ point to leeward of us; could not then see the hull of the propeller; when first saw bright light, propeller must have been 1½ miles from us; when first saw three lights, should judge she was about 3 times her own length from us. I could, from the wheel, see the propeller, when three lights showed, either from weather or lee side. I looked to see from which. I thought there was some danger. I thought there was some danger when first saw three lights. That was what made me look so many times. The three
40 lights kept ahead of us a couple of minutes. I judge when I first saw her three lights was about 5 or 8 lengths off. She might have been then a quarter of a mile, or more, off. She might have been a mile off, but don't think she was. She got 3 or 4 points off our port-bow, or more. This was not many minutes before the collision—

may be two minutes. I believe it was a minute. I did not look at the compass to see the bearing. I could tell without it; at that time could see the red and bright light of propeller, but not the green light. Afterwards, before she came into us, saw her green light; could see her red light, and mast-head light, at the time I put helm up; think there is no doubt of it; could see the three lights before she had put off to windward. Then she put off to windward sudden, & she got off to windward 3 or 4 points, perhaps more. When she put off to windward sudden could see red and bright light, and not green. It took her 5 seconds to go off to windward; c'd not tell the time. It was sudden; first saw her dead ahead, and then to windward. She shot suddenly to windward; could not then see her hull, only the lights; did not get wheel hard-up then; did afterwards; got it hard up. The propeller was about half her length away when I got wheel hard up; think our vessel might
41 have swung two points under the wheel. The propeller gave us a glancing blow. She struck us between stem and cat-head. We struck at an angle of about 45 degrees, perhaps a little more. We had two compasses in the binnacle; saw no drinking that night before going aboard the propeller. We drunk while aboard our vessel, about 48 hours before, when coming through the canal.

Re-direct:

When the propeller went to windward she went sudden, and then she came sudden back.

SAMUEL CLEMENTS:

Live in Buffalo; was on Fremont at time of this accident; was cook on board of her; have been on water for about 23 years; before the mast, and mate; had been aboard the Fremont about three weeks; at time of collision was on deck; had been below before that; heard the look-out report a light. He reported light ahead. The mate answered all right, or something to that effect. Then I heard the mate report to Capt. Fraser that the light did not appear to alter its course. Then Capt. Fraser got up and looked out of the companion-way, and told the mate to light the torch light. I got the matches to light the torch, and gave them to capt. He lit the torch. Then the mate swung it
42 under the lee-side of the boom. Then, while he was swinging the light I looked up the scuttle to see if I could see the propeller-light myself. I did see a bright light. It was right ahead; might be half a point on the weather-bow. Then I heard Capt. Fraser say to light torch-light again, & and I went to cabin and gave some matches again to capt., and he lit the torch. The mate showed the torch lighted at the same place as before. Then I went to look up through my scuttle again, and I could make out the whole three lights of the propeller bearing right down upon us. I could then just begin to see the hull loom up. In hazy weather like that, I cannot give any estimate of distance. I see' Capt. Fraser then jump atop of the house and hail the propeller. He sung out two or three times, but what words he said I cannot say. Then the vessels came together.

X-'d:

Have been on lakes about 13 years; have been before the mast; was in the galley when light reported; cabin and galley, all one, on main deck. The look-out reported light ahead; capt. was in cabin, separated by partition from galley. The scuttle was forward part of galley. The capt. did not say *no*thing when light first reported. He

did not appear to take any notice. This was 8 or 10 minutes before collision. He did not get up or pay any attention till mate said
43 light did not appear to alter; then he looked out over companion-way. I heard him order the torch to be lit. The mate was looking down in the cabin, standing on deck. Cap'n spoke up and ordered torch to be lit. I jumped down and got the matches. When I looked out I could only see the bright light; looked only a moment. I got some matches and handed them to cap., who lit the torch and handed it to mate. Cap. stood in companion-way looking. I could see the mate show the light to leeward—then I did not see the propeller's lights. Directly after he showed another flash-light, in 2 or 3 seconds, just long enough to light another. I saw mate show that. Cap. did not come on deck till after 2nd torch-light; then cap. got on top of the house to hail the propeller. When I saw the three lights they were about 4 points to windward, bearing down on us. I did not notice how long this was after showing 2nd torch-light; might have been ½ minute or minute; it was not directly after showing 2nd torch-light that looked out scuttle & saw the 3 lights. The cap. went on top of the house and hailed the propeller more than once—cannot say three times. It was very short time after seeing three lights that collision occurred; it was only a few seconds. I went to port-quarter; could then only see
44 the green light. I run top of the cabin, and ran to the quarter. The cap. was up there when I got there. The roof of the cabin and house is the same. I know how the sch'r had been heading; saw the compass a few minutes after eight—not after; she was then heading southwest-by-west. The mate, when I went on cabin, was on port-quarter of vessel. The cap. told them to light the 2nd torch; heard the cap. tell the man at the wheel to keep her off ½ point; this was a little after 8. After the cap. came on top of the house, and when he jumped off to come on deck, *after* he gave order to hard up.

JOHN BARCKLEY:

Live in Chicago; business is seaman; have been seaman 11 years; was on board the Fremont at time of collision in capacity of 2nd mate. I went below at 8 o'clock. The first I knew of it heard the look-out report a light ahead. He reported it to Mr. Stone, 1st mate; he answered the man back. The mate handed the torch down and the cap. lit it. That is all I knew of that. Next, he handed it down again, and I thought something serious, & I went to kitchen scuttle and looked out and saw the mast-head light. This was after 1st torch. After 2nd torch, looked again in same place and saw mast-head and green
45 light. The mast-head and green light were about 1½ points to windward. I was then in companion way. I was on the weather side of the vessel, about 8 or 10 feet from the rail. Then I made for the deck. She was then quite close to us, and I heard cap. give order hard up. I could then make out the hull of the vessel and the men standing on deck. She was quite close. The propeller hit schooner between cat-head and fore-rigging; have been on lakes 4 years; was 2nd mate with Cap'n Fraser about three weeks before this; first, I had been 2nd mate; before that, before the mast. I did not get up when light first reported; cook with me; mate passed torch down; did not hear any one report the vessel's lights not changing before the torch was ordered; did not hear order torch lit. Cap. was sitting by table; do not know what he was doing. It was a very short time before collision that heard light reported; could not have been more than 5 or 6 minutes; have not talked with Cap. Fraser concerning this collision since

seeing him on Wednesday. I did not look out till mate passed down the torch the 2nd time. I looked out then. The mate passed it down 2nd time, same as first; did not hear cap. direct torch to be lit. It was a very short time before collision that torch was passed down—about 3 or 4 minutes; did not look out at once; saw mast-head light
46 about 1½ points on weather-bow; could not, the first time of looking, see any other signal-lights. I looked out the scuttle a couple of minutes, or minute and a half; saw nothing but bright light this time; when stopped looking, it bore 1½ point on windward; then, on deck or quarter, I saw mast-head light and green light; could make out her hull. I did not see the red light at any time; went right on deck as soon as I got through looking through scuttle. I hurried up; do not know the reason *as* I could not see the red or green light when looking through scuttle. Sails were on the other side; I was looking on purpose to see. The cook was looking through scuttle at same time. I heard some one sing out from top of the house; do not know how many times; came from Toronto to testify. My home is in Chicago.

Redirect:

I went and looked out of scuttle before torch was passed down 2nd time; then saw only bright light; then went and put on my boots; was putting on my boots when torch was passed down 2nd time; then went up through the scuttle to go on deck; then saw green light and mast-head light. Propeller was then pretty close; could make out the hull; could not have been more than 100 feet off, at the most.

X-d.:

47 I was down in the cabin when 1st torch-light was shown; then went to scuttle in kitchen and looked out; that is time saw the bright light 1½ point off port-bow; could not then see the propeller; only bright light; looked out a minute or two; then went into cabin, put on my boots, and went on deck. 2nd torch was then being lighted; got on the starboard quarter as soon as the torch was out; as soon as got there I saw the bright and green light. I am sure about that. I came up with the torch. I guess the bright and green were about two points off our port-bow. She was then, I should think, about 100 feet off. When the 2nd torch stopped burning the propeller was not over 100 feet off. Only two torch-lights were shown that I saw; heard cap. give order to man at wheel to hard-aport; it was after 2nd torch went out and at the same instant; cannot tell how many points our vessel swung after this order. In my judgment, she could not have swung more than 1½ a point.

WILLIAM T. FRASER:

Live in Buffalo; am libellant. I owned Fremont at time of collision. She was enrolled and licensed. Since collision I have surrendered papers to custom-house. I had on a cargo of 2,200 barrels of salt.
48 I was carrying cargo under this bill of lading. Her whole tonnage was 208, and near 209. Her length, I think, 123 feet custom-house measure; breadth, a little over 23 feet, and depth, 9 $\frac{3}{12}$ feet; was bound for Sandusky at time of this collision; had a red and green light on Fremont at time of this collision; they were placed on the paul-post. I had a four-foot screen-board. I had one of my old felt screen-board' over the paul-post, about 10 to 12 feet from her 'night-heads. The lights would be about 18 inches above the edge of the upper rail. I

placed the lights with the diameter of the bowsprit between them, and put the screen-board between them, fore and aft, 'midships. The screen extended to the 'night-heads—9 to 10 feet. One side of the screen painted green, where the green light was, and the other red. The lights were what is called the New York patent lamps; had had these over 2 years. They were burning well on the night of the collision; saw them after the collision from the propeller. I got onto the propeller; they were then burning brightly. I called attention of mate or 2nd mate of propeller to them, and said, "You see my lights are burning well." He said,
"Yes, they are all good." Have followed business of sailing for
49 19 years on salt water, and since spring of 1850 here; was capt. of Fremont at time of collision. The first I knew of this propeller I heard the report of look-out through my window in cabin. That report was light ahead, or right ahead; report was made to officer on deck. The next thing I knew of I heard the mate say, steady; don't let her fall of. The man at the wheel answered, saying something I do not remember. The mate then said, Light this torch, and I did. In a short while after I heard another report in cabin: It is a steamer; she is coming right for us. The mate asked me to light torch again, and I said, I have not time; the 2nd mate or cook will do it. I thought they were there. I jumped on deck. I got on the cabin-top. I could see the green light & bright light, and shortly after the red. They were all about half a point on weather-bow. I did very little but watch those lights. I remained on top of the house till the main boom went over. I watched the lights for a few seconds. When first saw them they were about ½ mile off; probably less; ¼ mile at least. I stood and watched till the lights got pretty close to, and the green light almost shut in. At this time I could see the port-side of the hull partly; a kind of a
glance of it. The boat seemed to come in that style till within
50 about four times her length of us, & then she straightened up and came towards us. I asked the man at the wheel how the vessel was heading. He said she was on her course. The boat seemed to starboard her wheel then suddenly, when she was perhaps 100 feet off from us, or more. I then ordered the wheel hard-aport, hard-up. Then I saw it was done by looking behind, & I saw the man go over the wheel when the boats struck. She hit our vessel somewhere on the port-bow; cannot say exactly. The propeller was going ahead, and I thought so from the jingling of the bell & from the white water going aft from her propeller-wheel after the boats touched. It drove the Fremont off before the wind, and wore her off in the other tack, and left her broken side to leeward. At eight o'clock that night wind was something to westward of south, & then to eastward, fluctuating about south. It remained about so till collision. When I was going down heard the sails shaking, and told man at wheel to keep her ½ point off; to keep her full. That made her south-by-west ½ west. My vessel would go about 4½ knots by the wind, & off free about 6; about a six-knot breeze. When I came on deck she seemed to be going on her course. I did not take time to look at her binnacle. The propeller appeared by her lights to be steering
wild. I mean by getting to leeward, & then trying to cross
51 to windward, crossing my bows twice, & 2nd time striking my vessel. My vessel, with the wind as it was, dying away, and the sea we had, she would make about a point leeway. We had not a full load. The effect of this to an observer on another vessel, if he was any way close to me, would be to change my green light to a red light. My vessel would make her course good, but body would be waving off a

little. I came on deck because of 2nd report of look-out: The steamer is coming right for us.

X-d:

I had no insurance on this boat. My interest is for the full amount of vessel and freight. I think I have an interest to the extent of the vessel at any rate. The bowsprit is 22 inches in diameter. I set those two signal-lights 22 inches apart from their centres, if I remember right. The diameter of the lamps, I think, 7 or 8 inches. They were square on two sides, & round on the other, so as to set into a corner. It must have been at least 8 inches through the square part. The board set up in the middle was an inch and a quarter thick. The board was 8 or 9 feet long. I think the men were mistaken in saying it was 4. I never measured. Measuring along the deck from bottom of stem to paul-post, think would be about 7 feet, and from top of stern 9 to 10 feet.
52 I think the screen-board was forward of the forward part of the stem. The board was a foot and a half wide at the paul-post. it came off to a sharp point at the end. It run out above the lamps; it rounded out from the top down. The bottom of the board was on a level with the top of the paul-post. The paul-bit was five feet from the deck, & about a foot above the rail. It was above rail even forward, and about a foot above rail all round, & from the centre of the light a little more. The space across the lamp of the glass showing the colored light was about 5 to 6 inches. I forgot the notch on bottom of screen-board to let it into paul-post. The notch was about two inches deep, dropping the board that amount below the lamp; should think the board was 2½ feet from bowsprit at paul-post. The whole of the bowsprit was above the deck, except by the paul-post. I was below deck, in the cabin, when first heard about this light. I was reading a newspaper. First report was, Light ahead! This was from 5 to 6 minutes before collision. I think the first thing I did was to drop the paper and light the torch. A few seconds might have elapsed when mate handed down the torch. The mate handed in the torch to be lit, & I did not order it lit then. I had ordered it to be kept ready, there were so many vessels. The mate was
53 leaning over the cabin-door when I lighted the torch. He had hold of it, and took it out after lighting. I did not then go out. After the 2nd report that it was a steamer, and coming right for us, I went on deck. I am not sure whether the torch had been lighted a 2nd time when I went on deck. I think I recollect saying I had not time to light it. This 2nd report came about a minute after 1st report. I came out in a hurry on 2nd report. I got on cabin-top by the time 2nd torch was lit. I do not think I was in cabin when 2nd torch was lit, & I do not think I lighted the 2nd torch. I did not stop on the deck. I went right on top of house. It was two or three minutes, I should think, from time got on deck to collision; cannot tell well about time. 2nd torch-light had not gone out, I think, when I got on deck; torch-light would only burn 2 or 3 seconds. Saw the propeller's lights 1st a little on the weather-bow, almost a point to a point and a half; saw all three lights first, all very plain. I can judge better as to distances than times. I think these lights were a little outside of a quarter of a mile when I first saw them. I stayed on top of the house till the collision. 2½ points is about as far as they got on our port-bow. They then just about shut their green light in, but not doing it quite. She was then not
54 quite ¼ of a mile from us. I did not see all her lights down to collision. When she was about 40 feet from us I suppose she shut in her red light. Before that I saw all three. When I told them to put

helm hard up I could see the whole of her lights & nearly the whole of her starboard side. The propeller was then about 4 points off our port-bow; she was then 2 or 300 feet from us.

Q. What did you mean when you told me that, from the time when you got on to the top of the house to the collision, the most the propeller's lights got on your port-bow was 2½ points?

I meant to say that the boat seemed to want to go to the windward; that, when he got 2½ points on the weather-bow, he seemed to alter his course; and when the boat was 2 or 300 feet off, she was about 4 points off and rounding to. At the time the propeller was 4 points off, the green light probably bore from 3 to 3½ points. This was when she was about 2 to 300 feet off. When she was a little over ⅛ of a mile off, the signal-light bore about 2½ points off. Then she turned to come towards us. When she was a ¼ of a mile off, the lights bore about ½ point off.

Q. How is it that, when the propeller was about ⅛ mile off, & her lights bore 2½ points off your port-bow, and when she was within
55 200 or 300 feet, her lights bore about 3 or 3½ points on your port-bow—how did this happen, when she had changed her course, as you say, to come towards you?

It took her a little time to change her course to come towards me. It takes a little time for a vessel to change her course. The joint velocity of the two vessels would produce this very quick. Down to this time, I think I had not changed my course. I am certain of that, down to the time that I saw these lights 3 to 3½ points on port-bow; think our course had been southwest-by-west ½ west. At the time I gave order to hard up, the stem of propeller might have been 100 feet off. I had not looked at compass. When I saw the vessels coming together I asked man at the wheel how she was heading, and he said, she was on her course. Her green light then bore about 3½ points. When I saw propeller's light, about ¼ mile off, I supposed she was steering about east-northeast. She seemed to be heading about ½ point to windward of our vessel. I had a centre-board on our vessel. It was about half-way down. What I mean by running to leeward, that she would run a point to leeward of her apparent course. I think we were making a course about west-by-south half south. I did not put the centre-board clear down
56 & there being a large sea on, it might strain the vessel or strain the board. At the same time I did not care if she did run over to the north side of the lake, on account of the wind.

Redirect:

I examined the screens of the Wenona during the winter. They are three feet from the centre of the light to the end of the board. I can see her lights with such board about 2 points off her bow. I mean I can see her green light about two points off port-bow, and same with the other. A trifle either way from right ahead of my board would shut off the opposite light, that I could not see it ¼ point off.

X:

If you opened one of my lights it shut the other in. The bowsprit was a continuation of the screen. The bowsprit was only 18 inches diameter at the end. I do not think it w'd shut in the green light a little on the starboard side. I could see the green light of the Wenona 2 points off her port-bow. When I said she was about 2½ points off our port-bow, & we were just *loosening* her green light, she must have been heading about 2 points more off. Her pilot-house is the first that shuts in her lights on either side.

57 *Claimant's witnesses.*

APRIL 23, 1870.

SHELDON PEASE:

Am one of the owners of the Wenona, and was at time of collision. The others were W'm G. Fargo & Elisha A. Buck. Her length of keel, 190 feet, and about 200 feet over all. She is a little over 30 feet broad.

OSCAR B. JOINER:

I live in Jefferson County, New York. Business is sailing; have been a sailor 22 seasons, most of the time on the western lakes; have sailed in all capacities; have been officer of propeller 17 or 18 years. Last season was my 3rd season as master of propellers; was on propeller Wenona at time of collision, as master. This was Nov. 29, 1869; had been master of her all the season. On that trip I was bound from Chicago to Buffalo; was loaded with flour principally. She was not loaded then to her mark. She was about 6 inches aft, and about 8 or 10 inches forward, lighter than usual. She is 840.30 tons, new measurement; cannot tell her length exactly, some 300 feet, I think. She had a white mast-head light, green light on starboard, and red on port. Her colored lights
58 were on the highest points on her arches. The screening was regular, screen-boards, about 4 feet in length, the inboard came up as high as top of lamp. A screen-board behind the lamp, the lamp set right in the corner. Right dead ahead you could see all our lights. Standing on the promenade-deck you could not see them all—the screens prevented it. On the port-side you could not see the green light unless you went high enough to see over the screen; could not see the red light off the starboard-bow; know this is so by looking at it. I have noticed it when lights were lighted. I have noticed when I have been standing on promenade deck. I have had to walk clear out and look over the rail to see if lighted. The quality of lights was good. They were burning good on night of this collision. I was on deck at time of this collision. It took place about nine o'clock of the night. It was in my watch. I had taken the deck at six o'clock. Mr. Merriman, 2nd mate, was in my watch. McDonald was look-out, and Montgomery at wheel. I remained on watch 'till collision. These men mentioned remained with me. The look-out was standing forward on promenade-deck. He was keeping watch for ligh s. He had no other duty to perform except to call the watch at the proper time. He did no other duty. He called the watch at 8 o'clock. He did not leave the deck for the purpose, if at all, to exceed ½ minute.
59 He had to call Montgomery at 8 o'clock; think he did call watch that night. He had no one to call but Montgomery, from time of calling watch to collision. He was standing forward. I was on deck, and second mate, when he called watch. It was kind of hazy that night. No fog along before the collision for ½ an hour. It was cloudy and rainy. It did not rain very hard; a fine rain. I should judge could see a colored light about 2 miles that night. We were on course east ¾ north, along before and at time of making schooner's light. That was the course by our compass, from the dummy, which was off Point Pelee. I suppose by correct compass our course would be east-by-north ½ north. Compasses are apt to vary. My compass is about ¾ point out of the way; hardly ever see two compasses by which you can steer the same course and reach the same place. Had been on same course about 6½ hours when first saw schooner. The speed of our vessel was about 10 miles an hour. I was standing forward of capstan, leaning against it,

on promenade-deck, when first saw sch'r. 2nd mate was front of pilot-house, on hurricane-deck; look-out, about ten feet forward of me. We then had been occupying these positions nearly one hour before. First I knew of sch'r, saw a torch-light. It was ½ a point on our port-
60 bow. We all three saw it together. That was about ten minutes before the collision. The next thing that occurred, the torch-light went out. When I saw the torch-light I went onto hurricane-deck, front of pilot-house. I just cast my eye to the compass and saw the propeller was on her course, east ¾ north. I did not alter my course till I got hold of her colored light. I did not know but it might be a vessel going down. Wind was fair either way. Wind was south-southeast; should judge flash light to have been 2 miles off. Presently, after the torch-light went out, I saw a green light right dead ahead of us. The next thing, told the wheelsman to put the wheel astarboard, at the same time time looking at compass to see if schooner varied, or we. Had only seen one torch-light at time of order to starboard. About this time they lit the torch again; propeller commencing swinging off slowly to port, as fast as I thought necessary. I should think it was 5 or 6 minutes or more from time of this order, to starboard, to collision. I did not time it. It opened 2nd torch-light on our starboard as we swung, & while the torch was burning I could see neither one of their colored lights. After this torch-light went out I saw the green light again. I do not think I gave, at this time, more than one order
61 to starboard. We kept swinging off slowly to port. We had not steadied her at all. After we had swung off so that we had opened his green light about 2 points on our starboard bow he showed us his red light; the first I had seen of it. I told wheelsman to put up his wheel hard-astarboard. Down to that time we had not steadied our vessel at all. We had been swinging to port, slowly, fast enough to clear anything; should judge it was not more than a minute or two before collision that first saw this red light—might have been a little less or more—not less than a minute though; should judge, when first saw red light, she was from ¼ to ½ mile from us, to windward & ahead of us. The red light, when first seen, bore about two points on our starboard-bow. When I gave order, hard-astarboard, I started and went atop of the pilot-house. The 2nd mate, at this time, was standing aside of me, & the look-out standing down forward, on the promenade-deck. When I said hard-astarboard the 2nd mate jumped into wheel-house and helped turn wheel over. When I went atop of pilot I said something like "What in hell are you keeping away for." They made some reply. I do not know what. I could see red light when on pilot-house; did not see green from time first saw red down to
62 the collision. When got to top of pilot-house saw schooner, and shape of her. Her sheets, I should not think, were hauled flat aft, pretty well before the wind. After I *see* we could not clear of them I stopped & backed. I rung one bell to stop, then two to back. I have to ring to stop before ringing to back. The effect of order hard-astarboard, was to swing vessel to port. After ringing to back, I rung to back again, for feer the engineer did not hear. The vessel's stems came together at a little less than right-angles. The bluff of our starboard-bow & the bluff of his port-bow first struck. His cat-head struck us back, about 6 or 8 feet back of our stem. After she showed her red light she was running across our bows. As she kept coming towards us she kept paying out. I mean, she was swinging to her own starboard. If she had not changed her course there would have been no collision. Down to the time I saw red light, as described—I h*ave* not seen her red

light before—our signal lights were burning first-rate that night. The vessels came together about 5 points between the sterns, and the bluff of the vessel's port-bow and propeller's starboard-bow *came together*. The stem of the propeller slewed the bowsprit of the schooner. The schooner swung around alongside of the propeller and dropped behind, and then swung round on the other tack. We had foresail set.
63 The schooner's sails jibed over right after the collision. We jibed our foresail right after the collision.

X-d:

The first I saw of the schooner was the flare-up of the light. It did not show on the sails; think, as near as I can judge, the vessels were about two miles apart. We were going about 10 miles an hour. The flare-up light bore about half a point on our port-bow when I first saw it; saw no other light at that time, while that was burning; did not see any other light immediately after flash-light; saw one about two minutes after, as near as I can judge. The first light I saw after flash-light was green light. I gave no order after seeing the flash-light and before seeing green light. The green light bore right dead ahead, or near that, when I first saw it; if anything, a little on our starboard bow. I told the wheelsman then, to put his wheel astarboard. I gave that order immediately on making the green light. The wheel was put astarboard. Our vessel was swinging to port from that time down to collision—swinging slowly. Before the collision I saw the red light of the schooner; that was after I had seen the green light. The vessels were from
64 ¼ to ½ mile apart when first saw the red light; not less than a quarter & not to exceed ½ mile. I continued to see the red light till we came together. The red light bore about 2 points on our starboard-bow when I first saw it. I do not think the bearing changed much up to the time of collision. I should think we were probably 3 or 4 times our length off the first time I rung to stop. We might not have been as far. We were more than about our length off. I rung to stop and rung to back. The engine stopped and then commenced working again. I rung so quick to back again that I do not think the engineer stopped working the engine at all under the 2nd order. When the 2nd order was given I should presume we might have been a length off. I gave the first order hard-astarboard, when he showed his red light; had not steadied the vessel at all from the time of giving order to starboard down to time of giving order hard-astarboard. The sail I had up was on the spar. It was a foresail. It was the only sail I was carrying. I had been carrying since about three o'clock in the afternoon. I was standing in front of pilot-house when I gave the first order to starboard—on the hurricane-deck. I had not seen the 2nd flash-light
65 when I gave the order. Before the boat had time to swing any it showed. I saw the 2nd flash-light soon after I gave the 1st order to starboard. The 2nd flash-light bore very nearly dead ahead; a trifle on our starboard-bow of the two. I had before seen the green light, and after the flash died away I saw it again. I cannot tell exactly how it bore. It might have been ½ point or 1 point on my starboard-bow; that is as near as I can judge. The red light appeared a minute after that. It might have been more. The red light bore about two points on our starboard-bow when it first appeared. I never measured these screen-boards on the Wenona. I only knew the length from judgment. Our side-lamps are large round lamps; all round. I have tried from aboard propeller, and on dock have tried to see whether lights would show on other side; to see whether properly fixed. They were lighted

when I tried it. I never tried it in any other way. The wind was south-south-east. Our sheet was hauled aft, as close as it could be set by the wind, and have the sail set and pull. The velocity of our boat would not have any great effect on the capacity of the sail to pull the way the wind was blowing at that time.

66 Re-direct:

When I give the course of the wind as south-southeast, I mean by true compass. I do not remember who was the maker of our lights. They were circular lamps with glass around. I think there is a door on the back side of the lamp where it opens, but I am not sure. Our propeller had one screw. It turned astarboard when it was going ahead. When I spoke of the green light being ½ point to a point on our starboard-bow, I referred to time when torch went out 2nd time. The green light I should judge about 2 points off on starboard-bow, before seeing the red light. After seeing 2nd torchlight the green light continued to open on our starboard-bow down to the time it shut off, and red light showing. The collision, I should judge, was 18 or 20 miles out in the lake from Canada shore, about 65 miles from Point Pelee this way.

X'd:

Cannot tell how many points our vessel swung to port from the time of 1st order to starboard. I did not look at the compass. I should think about 7¼ points. I cannot tell anything about it; might be that; not more, and might be less. The propeller will mind the starboard wheel better than that to port. As things were then she would mind it quicker.

67 By COURT: She had on foresail. That would make no difference as to her minding her starboard-helm quicker. In propeller's sails would not make so much difference.

RANDALL MCDONALD:

Live in Detroit. My business is sailing; have been seaman since 1855; have been on western lakes since 1858; have sailed before the masts on vessels, and deck-hand, and mate on propellers; was mate on propellers 5 or 6 seasons on all the western waters; was on propeller Wenona at time of collision; had then been on her since July; was on her in capacity of wheels-man for a month & look-out the balance of the time. I was on duty the night of the collision as look-out. I went on watch at 6½. The collision occurred in capt's watch. I stationed myself forward on promenade-deck. I kept a look-out there. I did nothing else, but called the watch at 8 o'clock. I stepped back to wheelsman's room for the purpose, and went right back. I was half a minute doing that. I went to the door and into the room to do it—wheelsman's room on promenade-deck. After calling him I went back to my position forward, on the promenade-deck, and remained there till collision. I reported what

68 was seen. 2nd mate was on watch, Geo. Montgomery at wheel, and I look-out. Propeller's lights were burning well; green light starboard, red light to port, and bright light at mast-head. They were good lights as to quality. I do not know whose make. To see whether they were burning well I would have to stoop over the rail on each side to see them. The lights did not show across the bows any. The evening, as to weather, was drizzling rain. There was no fog. The wind was about south-southeast, as near as I could judge. The first I saw of the schooner was a torch-light. That was about 10 minutes before the collision. That bore about ½ point on our port-bow when I first saw it.

I was standing forward on promenade-deck when I first saw torch-light. Another torch-light was the second thing I see. The next thing I saw after 2nd torch-light was a green light. I should judge it was 7 or 8 minutes before collision that first saw the green light. When first saw green light it bore from ¼ to ½ point on the starboard-bow. Heard orders given on my vessel by the cap'n. The first order was starboard the wheel. That was about the time I seen the green light first. The
69 propeller swung to port. The green light continued to appear opening out to our starboard-bow. It opened out 1½ to 2 points. I saw a red light besides. That I guess I saw from 1 to 2 minutes before collision. Should judge red light was aft from ⅛ to ½ mile when I first saw it. When first saw it bore about 1½ points on our starboard-bow. After capt. gave order to starboard, heard him give order to hard-astarboard. That was when I saw the red light. The propeller was not steadied between orders starboard & hard-astarboard. She kept swinging to port. The propeller swung to port. Saw no red lights aboard the schooner prior to the time I have spoken of. After I saw the red light I c'd see the shape of the canvass of the schooner. She appeared angling across our bows. The schooner was going at this time, apparently, off the wind. I heard the capt. ring the bells. I could not say what the orders were. I was standing forward on promenade-deck when vessels came together. They came together, I should think, a point or two less than a right-angle, our starboard-bow & his port-bow.

X-'d:

Was on Wenona all the time that season, from July till collision. I came on watch at 6½. My watch lasted as look-out till one o'clock in the morning. I was the only watch from 6½ to 1 a. m. I did not look at the compass at all that evening.

Q. How do you know then the wind was south-southeast?

A. I asked the 2nd mate how she was steering. He told me
70 she was steering east ⅜ north. I took the wind to be south-south-east from that. I asked this as I came on watch. Can tell as well by the wind as on sailing. As were burning coal that night, I based my judgment on the smoke and also on the sail set. The first thing I saw was the flash up of torch-light. I told the cap'n it was a vessel's flash-light. I reported it as such. The first flash bore ½ point on our port-bow. Next thing I saw was another flash-light. That bore nearly dead ahead, probably a little on our starboard-bow. Next thing I saw a green llght; when first, it bore from ¼ to ½ point on our starboard-bow. The vessels at that time, when first saw green light, were probably a mile apart. The order to starboard was given about the time I saw the green light. As I reported the green light cap'n sung out to starboard. Our vessel then swung to port as soon as he gave her the wheel. She swung slow. The green light opened on our starboard-bow from 1½ to 2 points. The propeller was all that time swinging slowly to port. I then saw the red light. The red light bore about 1½ points on our starboard-bow when I first saw it. The propeller was still swinging to port. The Fremont was from ⅛ to ¼ of a mile off when I first saw red light. I could then see the shape of the canvass. I
71 could see which way the schooner was then going. She stood across our bows. When I saw canvass she seemed pointing across our bow, and about 1½ points off our starboard-bow. When I saw her canvass she was a little less than ⅛ to ¼ of a mile. As soon as I saw her red light I saw her canvass. I did not tell

the capt. then how she was heading. I reported the red light as soon as I *seen* it. When I reported red light, order was given hard-astarboard. Our vessel was swinging to port when we made the red light. When they put wheel hard-astarboard she began to swing faster. The vessels were then from $\frac{1}{8}$ to $\frac{1}{4}$ mile apart. When order hard-astarboard was given the red light bore off from 1 point to $1\frac{1}{2}$ off our starboard-bow. It was growing less in bearing as they were coming together, so the red light got about ahead of us as we struck. I was still standing right forward there when they first touched. I should say they were a point or two less than a right angle. I was where I could see very well how they came together. I was right forward. I did not take notice whether the schooner jibed before we parted. They did not stick together; they lapped together. Stems came together, side by side. I did not see the red and green lights of the Fremont at the same time. I thought the jib-boom of the sch'r carried away our davit.

72 GEORGE MONTGOMERY:

Live in Canada most of the time. My business is sailing. Have been sailor, off and on, these 18 years; was in the Wenona at the time of collision, in capacity of wheelsman. I went on watch that night about 8 o'clock. Our course, by our compass, was east $\frac{3}{4}$ north. I saw the sch'r's bright white light before the collision. I should think 10 or 12 minutes before. I did not time it; that is my estimate. It looked like a torch-light. It bore right ahead, on the starboard, if anything, when I first saw it. Shortly after that the capt. told me to starboard. I obeyed the order. I saw a red light after that on schooner. When I saw the red light, as near as I can get, it bore about 2 points on starboard-bow. I was not looking out for lights at all. I saw no green light on the schooner at all. Before I saw the red light I got order from capt. hard-astarboard. I obeyed the order. 2nd mate came in and helped me put the wheel over. I was in the pilot-house when the vessels came together. I cannot tell how they came together. I was still at the wheel. When I first saw flash-light, propeller was on course east $\frac{3}{4}$ north by our compass.

X-'d:

73 I saw one flare of light. I do not know whether any light had been reported before I saw this; none that I heard. The flash-light that I saw bore a little on our starboard-bow, about $\frac{1}{4}$ of a point. I had received no order before that. I received an order before I saw the red light. I received order to put wheel to starboard. I put wheel astarboard before I saw the red light, about half a minute. I put it astarboard enough to give her a swing, and then I got order to put her hard-astarboard. The order hard-astarboard followed the order to starboard about a minute or a minute and a half, as near as I can judge. I did not take notice how much vessel swung under order to starboard. My attention was taken off from compass. I do not know how vessel was heading when I got the order hard-astarboard. I did not look to see. After I had put the wheel hard-astarboard I looked out and saw the red light. I did not put the wheel hard astarboard alone. The 2nd mate helped me. The 2nd mate came from front of the pilot-house to help me. He run in. He came in quick. I cannot tell how far apart the vessels were, because I could not see anything outside without I saw a light. I had got my wheel over before I saw the red light. Then the red light stood about 2 points on our starboard-bow. I saw

nothing but the red light. I could not see the schooner. I
74 was not busy all the time from time of order to starboard to hard-astarboard. I held the wheel. If I looked at the compass I do not recollect how we were heading. I do not recollect how we were heading when we struck. I recollect noticing we were swinging after order to starboard, and we kept swinging till we got the order to hard-astarboard. There was about a minute or a minute and a half between these two orders. I should think, with the wheel, as I put it under order to starboard, the vessel would swing from a point to a point and a half in a minute. Should think about a minute and a half elapsed between the two orders. The propeller had commenced swinging more to port under the order hard-astarboard before I saw the red light. It was about a minute between my seeing the red light and the vessels coming together. The propeller was under way then. I heard bells jingle. It was after wheel was hard-astarboard. I did not take particular notice of the bells. I know the engine was stopped by the motion. It was before they hit. I did not see the vessel at all before collision. It was a minute before collision. It was about two minutes before collision heard jingle. I do not know the time; have no idea about it. I was not very much excited. I was not excited before the collision. I did
75 not go out of wheel-house till after collision.

2½ *P. M.*

EDWARD M. MARION:

Live in Fredonia; business is seaman; have been a seaman about 12 years—as seaman, 2nd mate, mate, and master; have been on salt water; on western lakes; have been about 4 years in capacity of 2nd mate, mate, and wheelsman; was on Wenona at time; was 2nd mate; was on watch; went on at 6½; was standing in front of pilot-house on hurricane-deck when first saw anything of schooner; capt. was on promenade deck; first I saw of schooner saw the flash-light; should judge this was 8 or 10 minutes before the collision. The flash-light bore about ½ point on port-bow when I first saw it. The next thing I saw was the glimmer of a green light. That bore very little on the port-bow. The next thing that occurred, the capt. ordered the wheel astarboard; next a flash-light appeared. The 2nd flash-light bore dead ahead; wheel was put starboard and vessel began to swing; and I saw the green light after the flash-light about half a point on the starboard-bow. I was standing at this
76 time in front of pilot-house; green light got to a point & a half to two points on our starboard-bow. Down to that time I had seen no red light. The next thing I saw a red light. I was then standing at some place in front of the pilot-house. The red light bore about two points on starboard-bow when I first saw it. The next thing after seeing red light capt. ordered wheel hard-astarboard. He was standing in front of the pilot-house when he gave the order; should judge the red light was a little over a quarter of a mile off when I first saw it. To the best of my judgment, should think this was a little over 1½ minutes to 2 minutes. When order hard-astarboard was given, I went into pilot-house and helped wheelsman to get the wheel over. Got it hard over before I left. I then went out in front of the pilot-house. The boats had then not got together; should judge the boats were then about a length apart. I could see the shape of the sails then. She was then well before the wind—she looked as if she was so. I was standing in front of the pilot-house when the boats struck. The bluff of her starboard-bow and the bluff of her port-bow touched. I should judge they struck at about an angle of 45 degrees. I stood where I could our lights

were burning well that night. I have seen the lamps out in the hall. The lamps of propeller were something similar to that. I do not
77 know who the maker was. I think they were as large at bottom, but not so much top. The screen-board was about as long as that, (about 3 ft. long; from front of lamp, 2 ft. 11 inches; the whole board 3 ft. 8 in.; from centre of lamp, 40 in.)

X'd:

I saw the green light before I saw the 2nd torch. 2 minutes or 2½ minutes elapsed between the 2 torch-flashes. Almost 2 minutes after 1st flash-light saw the green light. It bore a very little on port-bow then; less than ¼ of a point. After 2nd flash-light it loomed up again, that is, green light. In my judgment, it was somewhere in vicinity of a mile off then. Then saw first flash-light, almost two miles off. About 2 minutes after seeing 1st flash-light, saw the green. It was over a mile off. After I saw the green light the 2nd time, then I saw the red light. Just as cap'n gave order to starboard the 2nd flash-light appeared. No order to hard-astarboard had been given till red light appeared. The red light appeared about 2 points off on the starboard-bow. It was distant about a quarter of a mile or so, or a little over. When order to hard-astarboard was given, I went into pilot-house and helped wheel over; did not run; I hurried. Always go in when an order of that kind is given. It was part of my business to help man at the wheel if there was no person else there; do not generally have some other person for the purpose. When in lake it is my business to help wheelsman
78 on order hard-over; always thought it part of my business. Vessels were about ¼ mile apart when order hard-astarboard was given. Red light bore about 2 points on our starboard-bow at that time. After went into pilot-house did not see right light till I went on deck again. When come out on deck again vessels were about the length of our vessel apart; did not at any time see both the colored lights of the schooner. About 3 minutes, to the best of my opinion, elapsed between seeing the green light and the red. During those 3 minutes I was watching the schooner. I was standing on the front of the pilot-house. When the red light appeared it bore from me just about the same as the green, when it disappeared. It was not more than a second from the time the green light disappeared that the red came out; and the distance then was about ¼ mile between them. The order hard-astarboard was given just a moment after the red light appeared. I then went into pilot-house and assisted wheelsman in putting over wheel hard-astarboard. I then went out of pilot-house and went right in front of it; and when I got out the schooner was about the length of the propeller from her,
79 showing the red light. I could see her sails. If I remember right I see her jibs, foresail, & mainsail. The mainsail looked as if it was eased off. Her boom was well over in her quarter. The jibs looked as if they were taut aft. The foresail I could not tell so well. After coming out I had time to see all that before the vessels came together. I could look right down on the vessel from where I was standing. I was 14 or 15 feet & perhaps more above the schooner. I heard our bells. I was in the pilot-house then helping wheelsman. That was the first I heard it; had got the wheel most over when I heard it. I heard three bells & then heard 3 immediately afterwards. I was still in the pilot-house when I heard the last 3. I had already got the wheel over then.

Re-direct:

When I spoke of the glimmer of green light, it appeared before the 2nd torch-light. Between the 2 torch-lights could just make out green

light. It was till after 2nd torch-light that I could see green light plain.

W'M GRIMM:

Reside in Buffalo; am engineer; was on Wenona at time of collision as 1st engineer; shipped on her in April, and was on her till she was laid up. I was standing at my post, at my starting-bar; had seen nothing of the vessel prior to collision. The 1st order I got was
80 to stop and back. To my best judgment, that was about ½ minute before coming together. I was standing right at my post and I stopped and backed her as soon as I could. We have to first stop the engine before reversing it. I reversed the engine. She reversed, I should judge, 6 to 8, or may be 10 times before the collision. I am satisfied as much as 6 to 8. I should think that would check her headway greatly. It would not stop her entirely. I got another order to stop and back repeated before the collision. She was then already backing. She was backing at time of collision. Have been an engineer on the lakes, off and on, between 16 & 18 years; about 16 years ago was 1st engineer.

X-'d:

After getting the order to stop and back, I think I reversed it in 4 seconds, as I was standing at my post. I was standing there watching my steam and engine. I felt when the boats came together. We made six to 8 turns after reversal, for certain, & may be 10. I do not know how long it would take to stop & reverse and check headway of vessel. She might stop in a minute and a half, or two minutes. She had a very powerful engine aboard of her. I never tried how far she would go. We had 37 lbs. of steam on. I should judge we were making 10
81 miles an hour. I cannot tell how far she would run through the water before stopping; it might be a length and a half or two lengths. I can give no judgment about.

Re-direct:

We were allowed to carry 50 pounds of steam. The speed of a boat and how far she would go is something outside of my line, as I understand it.

WILLIAM T. FRASER, recalled:

My boat was built in 1856 and rebuilt in 1865.
Claimants rest.

Libellant's witnesses.

JAMES T. FRASER, recalled:

I examined the stem of the Wenona, daylight after collision. It was broke out to port & heavy iron thrown out the same, I should think 4½ to 5 feet up and down, & the starboard wall damaged some 4 feet from the stem—split. The bluff of her starboard bow seemed all right. I saw no marks on it. It was not repaired till spring and I was around two or three times during the winter. My large anchor was knocked in. My large port capstan was still up when my vessel broke
82 down. The red light shone on it. The water was running into my forecastle.

X-'d:

I was all around the bow of the propeller. I remember no marks on the port-bow. I remember some on starboard-side. My boat was

rebuilt to the amount of about $7,000 in 1865. I was not intending to rebuild her 'till she run out of her class. She was rated A 1.

ROBERT DICK:

Am seaman; have been for 23 years; measured her screens for colored lights about a week ago. From centre of lamp to extreme end forward, on bottom, is 3 feet; on top I should judge about 2 feet 10 inches. It is rounded off, just the upper corner taken off; both were the same. They were placed on the top of the arch. By the light being placed on top of the arch I should judge the green light would show about 1½ points on port-bow. The lamps were lighted. From actual experience the reflection would show one point more at the very least. It will make a difference the distance you were from it. If greater distance you could see it more to port. Each of these lamps has powerful magnifying glass behind the lights to show the rays of the lights. It throws the reflection out towards the horizon. The pilot-house will, according to my idea, shut out the lights before the shades; not having the lights lit could not tell.

83 X'-d:

Never saw the Wenona lights lit. I went aboard and measured the screws. I am giving my opinion as to reflection, as matter of science. I measured the upright screen. I measured from the centre of the place where the lamp sits. I measured from the centre of the holder of the lamp to outer corner. It was 3 feet. I measured both the green and red. The green light would, according to my judgment, show about 1½ to port, and the reflection would show it at a point more. I am just as certain of that as that it would show a point and a half off the port-bow. The substance of the lamp was there when I measured. The lamp was not there, but the place where it sits was. I never saw the lamps at all. I neglected to measure the height of the screen-boards.

HENRY THOMPSON:

Am seaman; have been for 40 years on salt water and lakes, as captain and otherwise. I measured the screens. It measured 3 feet from centre of lamps to forward part. That was the length of each. You could see the red light about 1½ points on starboard bow. I should judge it would be at least a point more from reflection. This I judge of from experience with lamps on my vessels. I should think
84 the lamps were 50 or 60 feet from stem, but I did not measure.

X'-d:

I never saw this light burning. I saw merely the frame and place for holding light. All my inference was from appearance of frame-work and experience. The corner of screen was rounded. The light reflects from the lamp. In clear weather it does not reflect at all; but in thick, moist weather there is great reflection. These screen-boards were fixed fore & aft, & more forward than aft of the vessel. The light of the lamp sets over the centre of the frame. It was just 3 feet from centre of lamp to end of screen.

Re-direct:

The lamp just about the centre of the arch & the screen-board just fore & aft.

light. It was till after 2nd torch-light that I could see green light plain.

W'M GRIMM:

Reside in Buffalo; am engineer; was on Wenona at time of collision as 1st engineer; shipped on her in April, and was on her till she was laid up. I was standing at my post, at my starting-bar; had seen nothing of the vessel prior to collision. The 1st order I got was
80 to stop and back. To my best judgment, that was about ½ minute before coming together. I was standing right at my post and I stopped and backed her as soon as I could. We have to first stop the engine before reversing it. I reversed the engine. She reversed, I should judge, 6 to 8, or may be 10 times before the collision. I am satisfied as much as 6 to 8. I should think that would check her headway greatly. It would not stop her entirely. I got another order to stop and back repeated before the collision. She was then already backing. She was backing at time of collision. Have been an engineer on the lakes, off and on, between 16 & 18 years; about 16 years ago was 1st engineer.

X-'d:

After getting the order to stop and back, I think I reversed it in 4 seconds, as I was standing at my post. I was standing there watching my steam and engine. I felt when the boats came together. We made six to 8 turns after reversal, for certain, & may be 10. I do not know how long it would take to stop & reverse and check headway of vessel. She might stop in a minute and a half, or two minutes. She had a very powerful engine aboard of her. I never tried how far she would go. We had 37 lbs. of steam on. I should judge we were making 10
81 miles an hour. I cannot tell how far she would run through the water before stopping; it might be a length and a half or two lengths. I can give no judgment about.

Re-direct:

We were allowed to carry 50 pounds of steam. The speed of a boat and how far she would go is something outside of my line, as I understand it.

WILLIAM T. FRASER, recalled:

My boat was built in 1856 and rebuilt in 1865.

Claimants rest.

Libellant's witnesses.

JAMES T. FRASER, recalled:

I examined the stem of the Wenona, daylight after collision. It was broke out to port & heavy iron thrown out the same, I should think 4½ to 5 feet up and down, & the starboard wall damaged some 4 feet from the stem—split. The bluff of her starboard bow seemed all right. I saw no marks on it. It was not repaired till spring and I was around two or three times during the winter. My large anchor was knocked in. My large port capstan was still up when my vessel broke
82 down. The red light shone on it. The water was running into my forecastle.

X-'d:

I was all around the bow of the propeller. I remember no marks on the port-bow. I remember some on starboard-side. My boat was

rebuilt to the amount of about $7,000 in 1865. I was not intending to rebuild her 'till she run out of her class. She was rated A 1.

ROBERT DICK:

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Never saw the Wenona lights lit. I went aboard and measured the screws. I am giving my opinion as to reflection, as matter of science. I measured the upright screen. I measured from the centre of the place where the lamp sits. I measured from the centre of the holder of the lamp to outer corner. It was 3 feet. I measured both the green and red. The green light would, according to my judgment, show about 1½ to port, and the reflection would show it at a point more. I am just as certain of that as that it would show a point and a half off the port-bow. The substance of the lamp was there when I measured. The lamp was not there, but the place where it sits was. I never saw the lamps at all. I neglected to measure the height of the screen-boards.

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Am seaman; have been for 40 years on salt water and lakes, as captain and otherwise. I measured the screens. It measured 3 feet from centre of lamps to forward part. That was the length of each. You could see the red light about 1½ points on starboard bow. I should judge it would be at least a point more from reflection. This I judge of from experience with lamps on my vessels. I should think
84 the lamps were 50 or 60 feet from stem, but I did not measure.

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I never saw this light burning. I saw merely the frame and place for holding light. All my inference was from appearance of frame-work and experience. The corner of screen was rounded. The light reflects from the lamp. In clear weather it does not reflect at all; but in thick, moist weather there is great reflection. These screen-boards were fixed fore & aft, & more forward than aft of the vessel. The light of the lamp sets over the centre of the frame. It was just 3 feet from centre of lamp to end of screen.

Re-direct:

The lamp just about the centre of the arch & the screen-board just fore & aft.

Claimant's witnesses.

EDWARD M. MARION:

Have examined these lights on Wenona. The green light cannot be seen on port-side, nor the red light on starboard. I have tried it when looking to see if they burning, & had to stand close to port-rail to see red light, & close to rail, about the same on other side to see the green. The lights are about forward of or amidships. The boat
85 is close on to 200 feet long. The lights cannot be seen except close up to the rail.

X'-d:

I was standing on deck when I tried this. I never tried it off.

Proofs closed.

86 At a special session of the dist. court of the United States of America for the northern dist. of New York, held at the city of Buffalo, on the 31st day of May, A. D. 1870.

Present, Hon. Nathan K. Hall, dist. judge.

WILLIAM T. FRASER, LIBELLANT,
vs.
THE PROPELLER WENONA, HER TACKLE, &C.,
Sheldon Pease et al., claimants.

This cause having heretofore been brought to a hearing upon the proofs & allegations of the respective parties, & due deliberation having been had thereon: Now, on motion of Mr. Williams, proctor for the libellant, it is adjudged and decreed that the collision mentioned in the libel herein, occurred from the fault of those in charge of the said propeller Wenona, and that said propeller is liable to the libellant for his damages arising therefrom. And it is further ordered, adjudged, & decreed that it be & is hereby, referred to M. P. Fillmore (who is hereby appointed a commissioner pro hac vice) to ascertain & report to this court with all convenient speed, the amount of said damages, to the end that on the coming in & confirmation of such report, a proper decree for the recovery & payment of such damages may be made.

And all further questions are reserved until the coming in of said report.

87 At a stated session of the dist. court of the U. S. of America for the northern dist. of New York, held at the city of Buffalo, on the 4th day of November, A. D. 1870.

Present, Hon. Nathan K. Hall, dist. judge.

WILLIAM T. FRASER
vs.
THE PROPELLER WENONA, HER TACKLE, &C.,
Sheldon Pease et al., claimants.

This cause coming on to be heard on the report of M. P. Fillmore, commissioner, &c., to whom it had been referred to ascertain and report the damages sustained by the libellant by reason of the collision mentioned in the libel, which report bears date the 28th day of Oct., 1870, & by which the said commissioner certifies and reports that the amount of such damages, including interest to such date, is the sum of ($13,979.52) thirteen thousand nine hundred and seventy-nine dollars and fifty-two cents:

Now, on motion of Mr. Williams, advocate for the libellant, and after hearing Mr. Hibbard, advocate for the claimants, it is ordered and judged, and decreed that the said report and all things therein contained, do stand ratified and confirmed, & that the libellant do recover for the said damages the said sum last above mentioned, and in-
88 terest thereon from the 28th day of Oct., 1870, together with the costs and expenses of this suit to be taxed. And, it appearing to the court, that the said propeller Wenona, her tackle, &c., has been duly delivered out of the custody of the marshal, on the security of a bond, dated the 9th day of Feb., 1870, in the penalty of ($33,490.00) thirty-three thousand four hundred & ninety dollars, executed by W'm G. Fargo & Sheldon Pease, to W'm T. Fraser, the said libellant, and conditioned that W'm G. Fargo, Elisha A. Buck, and Sheldon Pease, the claimants of said ship or vessel, her boats, tackle, apparel, & furniture, should well and truly abide and answer the decree of the court in this cause, without fraud or other delay: It is, on the like motion, further ordered, adjudged, & decreed that the said W'm G. Fargo & Sheldon Pease, pay into the registry of this court, within thirty days, the amount of said damages, interests, costs, & expenses, & that the libellant recover the same of said Fargo & Pease; & that if they shall fail to make such payment as hereinbefore directed, that execution therefor shall forthwith issue; and that on making such payment, that they be exonerated from all further liability by reason of such bond.

And it is further ordered, adjudged, and decreed that the claimants have thirty days within which to perfect an appeal, & to file the requisite security to stay proceedings on such appeal, & the time for bringing such appeal & filing such security is hereby extended for said period, & that no execution issue in the meantime.

89 United States of America, northern district of New York. In admiralty.

SHELDON PEASE, WILLIAM G. FARGO, & ELISHA A. Buck, claimants of the propeller Wenona, her tackle, apparel, & furniture, appellants,
vs.
WILLIAM T. FRASER, APPELLEE.

To the circuit court of the United States for the northern district of New York:

The petition of appeal of Sheldon Pease, W'm G. Fargo, & Elisha A. Buck, respectfully show & state as follows:

That a cause was heretofore commenced in the district court of the United States for the northern district of New York, wherein the above-named W'm T. Fraser was libellant, against the propeller Wenona, her tackle, &c., in which cause the said peti'oners were owners of the said propeller, her tackle, &c., & and were respondents; that the said cause was a cause of collision, and civil and admiralty jurisdiction; that such proceedings were had in said cause that, on the 31st day of May, 1870, an interlocutory decree or order was made therein by said district
90 court, in which it was, among other things, determined that the collision mentioned in the libel in said cause occurred from the fault of those in charge of the said propeller Wenona, and that the said propeller was liable to the libellant for his damages arising therefrom.

That such further proceedings were had in said cause that, heretofore, & on the 4th day of Nov., 1870, a certain decree was made by and in the said dist. court in the said cause, in which it was, among other things, ordered, decreed, and adjudged, that the said libellant recover for the damages therein mentioned, the sum of thirteen thousand nine hundred and seventy-nine dollars and fifty-two cents, and interest thereon from the 28 day of Oct., 1870, & certain costs & expenses, & that the said W'm G. Fargo & Sheldon Pease, pay into the registry of said dist. court within a time specified therein, the said amount of said damages, interest, costs, and expenses; and that the libellant recover the same of the said Fargo & Pease; & that if they failed to make such payment, execution issue.

That your petitioners are advised, informed, & respectfully allege, that the said last-mentioned decree, to wit, the decree made on said 4th day of November, 1870, and each and all parts thereof, is erroneous, and ought to be reversed, and that said decree or order made on the
91 said 31st day of May, 1870, and each and all parts thereof, is also erroneous, and ought to be reversed.

Wherefore your petitioners desire to appeal from the said decree, made on the 4th of November, 1870, and from each and all parts thereof; and from the final decree in said cause, and from each and all parts thereof; & pray that each and all parts of the said decree of the said 4th day of November, 1870, may be reversed, and that each and all parts of said decree or order of the 31st day of May, 1870, may be reversed; and that such other decree may be made by this court as should be agreeable to law, equity, and good conscience; and that the said appellants may be restored to all things which they have lost.

Dated Nov. 9th, 1870.

SHELDON PEASE.
WILLIAM G. FARGO.
ELISHA A. BUCK.
By GEORGE B. HIBBARD, *Proctor.*

GEORGE B. HIBBARD, *Proctor.*
GEORGE B. HIBBARD, *Advocate.*

93 (Indorsed:) No. 1831. U. S. circuit court, northern dist. of New York. In admiralty. Sheldon Pease et al., ap'ellants, vs. William T. Fraser. Petition of appeal. George B. Hibbard, proctor for appellants, Buffalo, N. Y. The within appeal is hereby allowed. Nov. 9, 1870. N. K. Hall. U. S. dist. court clerk's office, Buffalo, N. Y., Nov. 9, 1870.

93 U. S. of America, northern district of New York. In admiralty.

SHELDON PEASE, WILLIAM G. FARGO, & Elisha A. Buck, claimants of the propeller Wenona, her tackle, apparel, & furniture, appellants,
vs.
WILLIAM T. FRASER.

The above-named claimants and appellants, conceiving themselves aggrieved by the decree on the 4th day of November, 1870, made in and by the dist. court of the United States for the northern district of New York, in a certain cause wherein William T. Fraser was libellant, and the

above-named Sheldon Pease, W'm G. Fargo, and Elisha A. Buck, claimants of the propeller Wenona, were respondents, and by the certain interlocutory decree or order made in said cause, dated the 31st day of May, 1870, do hereby appeal from said decree made November 4th, 1870, and from each and all parts thereof, and from the final decree made in said cause, and from each and all parts thereof, to the circuit court of the United States for the northern dist. of New York, next to be holden in said district, and pray that this appeal may be allowed, and that
94 a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said circuit court.

Dated this 9th day of November, 1870.

SHELDON PEASE.
WILLIAM G. FARGO.
ELISHA A. BUCK,
Appellants.
By GEORGE B. HIBBARD, *Proctor.*

GEORGE B. HIBBARD, *Proctor.*
GEORGE B. HIBBARD, *Advocate.*

(Indorsed:) No. 1831 U. S. circuit court, northern dist. of New York. In admiralty. Sheldon Pease & others, appellants, vs. William T. Fraser. Appeal. George B. Hibbard, proctor.

The within appeal is hereby allowed. Nov. 9, 1870.

N. K. HALL.

U. S DIST. COURT, CLERK'S OFFICE, *Nov.* 9, 1870.

95 UNITED STATES OF AMERICA,
Northern District of New York:

To WILLIAM T. FRASER, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, to be held at the city hall, in the city of Albany, in and for the northern district of New York, on the third Tuesday of January, one thousand eight hundred & seventy-one, at the opening of the court on that day, pursuant to an appeal from the certain decree made in and by the district court of the United States for the northern district of New York, on the 4th day of November, 1870, in a certain cause in said district court, wherein Sheldon Pease, William G. Fargo, & Elisha A. Buck, owners of the propeller Wenona, were claimants and respondents; and you were libellant; and from each & all parts of said decree, and from the final decree made by said district court in said cause, and from each & all parts thereof.

In said appeal the said Sheldon Pease, William G. Fargo, & Elisha A. Buck are appellants, and you are appellee.

You are hereby so cited and admonished to show cause, if any there be, why the said decree of the 4th day of November, 1860, & said final decree should not be reversed & speedy justice done to the parties in that behalf.

96 Witness the Honorable Nathan K. Hall, district judge of the United States for said northern district of New York, this 9th day of November, one thousand eight hundred & seventy.

N. K. HALL.

GEORGE B. HIBBARD, *Proctor.*
GEORGE B. HIBBARD, *Advocate.*

(Endorsed:) No. 1831. U. S. circuit court, nor. dist. of New York. In admiralty. Sheldon Pease et al., appellants, vs. William T. Fraser. Citation. George B. Hibbard, proctor for appellants.

I hereby admit due service of the within citation, & of the receipt by me of a copy thereof. Nov. 9, 1870.

BENJ. H. WILLIAMS,
Proctor for Ap'ellee.

U. S. DIST. COURT, CLERK'S OFFICE, *Buffalo, N. Y., Nov.* 9, 1870.

97 Know all men by these presents that we, William G. Fargo, Sheldon Pease, Elisha A. Buck, & Joseph Warren, of the city of Buffalo, in the State of New York, are held and firmly bound unto William T. Fraser, in the sum of twenty thousand dollars, to be paid unto the said William T. Fraser, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, administrators, and executors, jointly and severally, firmly by these presents, sealed with our seals, and dated this 4th day of November, one thousand eight hundred and seventy.

Whereas Sheldon Pease, William G. Fargo, & Elisha A. Buck, have appealed or are about to appeal to the circuit court of the United States for the northern district of New York, from decree or decrees of the district court of the United States for the northern district of New York, made in a cause in which the said Sheldon Pease, William G. Fargo, & Elisha A. Buck, were claimants and owners of the propeller Wenona, her tackle, apparel, & furniture, and were respondents, and said William T. Fraser was libellant:

Now, therefore, the condition of this obligation is such that if the above-named appellants prosecute their appeal to effect, and
98 answer all damages and costs if they fail to make their appeal good, then this obligation to be void; otherwise to remain in full force & virtue.

W'M T. FARGO. [.]
SHELDON PEASE. [.]
E. A. BUCK. [.]
JOSEPH WARREN. [.]

STATE OF NEW YORK,
County of Erie, City of Buffalo, to wit:

William G. Fargo, Sheldon Pease, Elisha A. Buck, & Joseph Warren, being each duly sworn, depose and say, and each for himself deposes and says, that he is a resident and householder in and of the city of Buffalo, in the State of New York, and is worth the sum of twenty thousand dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt from execution.

W'M G. FARGO.
SHELDON PEASE.
E. A. BUCK.
JOSEPH WARREN.

Subscribed & sworn before me this 5th day of November, 1870, by all the deponents.

GEO. GORHAM,
U. S. Commissioner Northern Dist. of New York.

99 STATE OF NEW YORK,
County of Erie, City of Buffalo, to wit:

On this 5th day of November, 1870, personally appeared before me William G. Fargo, Sheldon Pease, Elisha A. Buck, and Joseph Warren, to me severally known to be the individuals described in, and who executed the above bond, and severally acknowledged that they executed the same.

GEO. GORHAM,
United States Commissioner, Northern Dist. of New York.

(Endorsed:) No. 1831. U. S. circuit court, nor. dist. New York. In admiralty. Sheldon Pease et al., appellants, vs. William T. Fraser. Bond.

I hereby approve of the within bond and the surety therein.
Nov. 9th, 1870.

N. K. HALL.

Original filed Nov. 9, 1870.

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District court of the United States for the northern district of New York.

I, Millard P. Fillmore, clerk of the said court, do hereby certify the foregoing to be a transcript of the record of the district court in the cause named at the beginning thereof, made up pursuant to rule 53 of the rules of the Supreme Court of the United States.

In testimony whereof I have hereunto signed my name and affixed the seal of the said dist. court, the 17th day of December, anno Domini 1870.

[L. S.] M. P. FILLMORE, *Clerk.*

101

102 (Indorsed:) United States circuit court, northern district of NewYork. In admiralty. Sheldon Pease, Elisha A. Buck, and W'm G. Fargo, claimants of the propeller " Wenona," her tackle, &c., appellants, versus W'm T. Fraser, appellee. Filed Dec. 19, 1870.

103 A.—*Statement of claimant's costs in suit of W'm T. Fraser against propeller Wenona.*

The suit was set down for trial at Buffalo, February 2nd, 1870.

Capt. Oscar B. Joiner came here from Henderson, Jefferson County, N. Y.

Attended, 1 day's time, @ $1 50	$1 50	
460 miles travel, 5 c	23 00	
		$24 50

The trial was postponed at the plaintiff's cost to March 1st.

On the 1st of March it was again postponed at plaintiff's costs.

Claimants had here Capt. O. B. Joiner, from Henderson.

Attendance, 1 day, @ $1 50	$1 50	
460 miles travel, 5 c'ts	23 00	
Edward M. Marion, from Fredonia, 88 miles, @ 5 c'ts	$4 40	
Attendance, 1 day	1 50	
		30 40
Costs on account of postponements		$63 90
		9
		$54 90

104 B.—*Claimant's witnesses at time of trial.*

Capt. O. B. Joiner, 6 days	$1 50	$9 00
2nd mate, Edward M. Marion 6 days	"	9 00
Look-out Randall McDonald " "	"	9 00
Wheelsman Geo. Montgomery " "	"	9 00
Engineer W'm Grimm 2 "		3 00

On value of damages:

Capt. O. B. Joiner, 1 day	$1 50	
James M. Averill, 3 days	4 50	
W'm C. Davidson, 1 "	1 50	
Charles P. Morey, 1 "	1 50	
Frederick N. Jones, 3 "	4 50	
Hiram H. Smith, 1 "	1 50	
Robert Mills, 1 "	1 50	
Nathan C. Winslow, 1 "	1 50	
Ozias L. Nims, 1 "	1 50	
Sam'l V. Parsons, 1 "	1 50	
Telegraphing	6 50	
Acknowledgment of 2 bonds	2 50	
Capt. O. B. Joiner, 460 miles	23 30	
Edward M. Marion, 88 "	4 40	
George Montgomery, 400 "	20 00	
		79 20
		$118 20

105 *Claimant's costs.*

U. S. circuit court, nor. dist. of New York. In admiralty.

WILLIAM T. FRASER
vs.
THE PROPELLER WENONA.

Docket fee on trial before district court	$20 00
Hearing in circuit	20 00
Paid for telegraphing	6 50
" " acknowledgment 2 bonds	2 50
Clerk's fees in U. S. dist. court	41 64
Clerk's fees in U. S. circuit court	33 50
Witnesses attending:	
Travel & attendance, O. B. Joiner: trial put off by libellant	24 50
Travel & attendance, Joiner & Marion; trial put off 2nd time by libellant	30 40
Travel & attendance, Joiner, on trial	32 30
	$211 34
Travel & attendance, Marion	13 40
" " Montgomery	29 00
" McDonald	9 00
" Grimm	3 00
" Joiner	1 50
" Averill	4 50
" Davidson	1 50
106 Attendance of Morey	$1 50
" " Smith	1 50
" Mills	1 50
" Winslow	1 50
" H. C. Winslow	1 50
" Nims	1 50
" Parsons	1 50
" Jones	4 50
	$288 24

Taxed & adjudged at $461.34.
June 29, 1871.

CHARLES MASON, *Clerk.*

107 United States circuit court, northern district of New York. In admiralty.

WILLIAM T. FRASER
vs.
THE PROPELLER WENONA, HER TACKLE, &C.

COUNTY OF ERIE, *City of Buffalo, ss:*

Sheldon Pease, being duly sworn, says that he is one of the claimants in this cause, and that the witnesses mentioned in the annexed

papers, marked A and B, travelled and attended on the part of the claimants in this cause, as is stated in said papers, according to the best of deponent's knowledge, information, and belief, & that the other disbursements in the bill of costs in said cause hereto annexed have been or must be necessarily paid or incurred, according to deponent's knowledge, information, and belief.

SHELDON PEASE.

Subscribed & sworn before me, this 27th day of June, 1871.

JA'S SHELDON,
U. S. Com'r.

108 (Indorsed:) U. S. circuit court, nor. district of New York. In admiralty. William T. Fraser vs. The propeller Wenona, &c. Costs, &c. George B. Hibbard, proctor for appellants, Buffalo, N. York.

It is hereby stipulated that the within bill of costs may be taxed & adjusted by the clerk of the United States circuit court, N. dist. of New York, at his office in Utica on the 29th day of June, 1871, at ten o'clock in the forenoon.

Buffalo, June 27th, 1871.

BENJ. H. WILLIAMS,
Proctor for Libellant.
GEORGE B. HIBBARD,
Proctor for Claimants.

109 At a term of the circuit court of the United States for the northern district of New York, held at the court-house in Canandaigua, on the 20th day of June, 1871—

Present, the Honorable Lewis B. Woodruff, circuit judge, &c., &c.

WILLIAM T. FRASER, LIBELLANT & APPELLEE,
v.
THE PROPELLER WENONA, HER TACKLE, &C., &c., William G. Fargo, Sheldon Pease, & Elisha A. Buck, claimants & appellants.

The appeal taken in this cause from the final decree therein of the dist. court of the United States for the northern dist. of New York, having been brought to a hearing before this court, & having been argued by George B. Hibbard, advocate for the claimant and appellants, and John Ganson, advocate for the libellant & appellee, & due deliberation having been had thereon, it is, on motion of George B. Hibbard, proctor & advocate for said claimants & appellants, ordered, adjudged,

110 & decreed, and this court now here doth order, adjudge, & decree that the said decree of the said district court, and each and all decrees made by the said district court in said cause, and each & all parts thereof, be, and the same are, in all things reversed and annulled; and that the libel in this action be, and the same is hereby, dismissed; and that the said libellant & appellee pay to said claimant & appellants their costs in this action, which have been taxed at the sum of four hundred and sixty-one dollars and thirty-four cents; and that the said claimants & appellants have execution therefor.

And it is further ordered, adjudged, & decreed that each & all bonds or stipulations given on the part of the said claimants and appellants in the said action be, and the same are hereby, cancelled.

(Endorsed:) U. S. circuit court nor. dist. of New York. In admiralty. W'm T. Fraser v. The Propeller Wenona, her tackle, &c., def't. Decree. George B. Hibbard, proctor for appellants. Filed June 30th, 1871.

111 United States circuit court, northern district of New York, ss:

Be it remembered that the *transmiss* of pleadings and proceedings herein from the district court of the United States for the northern district of New York, was sent here on appeal, & filed on the 19th day of December, 1870.

The appeal was duly argued by the advocates of the respective parties before his honor Lewis B. Woodruff, circuit judge, at the city-hall in Utica, on the 22nd day of March, 1871.

At the June term of said circuit court, 1871, a decretal order was made & pronounced herein, and entered on the 30th day of June, 1871, a copy of which is above annexed, by which it appears that the decree of the district court herein appealed from now stands reversed and libel dismissed, with costs.

Whereupon the said pleadings, proceedings, proofs, and costs as taxed, are now here, all attached together and annexed hereto; and the final decree herein is now duly enrolled, signed, & docketed for the sum of four hundred and sixty-one dollars & thirty-four cents, on this
112 15th day of July, 1871, in favor of Sheldon Pease, Elisha A. Buck, & William G. Fargo, claimants, of the propeller "Wenona," her tackle, &c., appellants, against William T. Fraser, appel'ee; and execution is prayed therefor, &c.

CHARLES MASON, *Clerk.*

113

114 (Indorsed:) U. S. circuit court, north. dist. of New York. In admiralty. William T. Fraser, libellant & appellee, vs. The Propeller "Wenona," her tackle, &c., Sheldon Pease, Elisha A. Buck, & William G. Fargo, claimants & appellants. Enrolled. Decree for costs to appellants against appellee, taxed at $461.34. George B. Hibbard, proctor. Filed July 15, 1871, 2 p. m.

115 To Supreme Court of the United States in admiralty.

WILLIAM T. FRASER, APP'LLANT,
vs.
WILLIAM G. FARGO, SHELDON PEASE, AND Elisha A. Buck, claimants of the propeller Wenona, her tackle, apparel, and furniture, appellee.

The petition of appeal of the above-named William T. Fraser, respectfully shows that a final decree was entered and dated on the 30th day of June, 1871, in the circuit court of the United States for the northern district of New York, in a certain cause of admiralty and maritime jurisdiction pending in said court, wherein the above-named William T. Fraser was libellant, and the above-named William G. Fargo, Sheldon Pease, and Elisha A. Buck were claimants and respondents, in and by which
116 said decree it was ordered, adjudged, and decreed, among other things, that the decree of the district court of the United States for the northern district of New York in the said cause be reversed, and

papers, marked A and B, travelled and attended on the part of the claimants in this cause, as is stated in said papers, according to the best of deponent's knowledge, information, and belief, & that the other disbursements in the bill of costs in said cause hereto annexed have been or must be necessarily paid or incurred, according to deponent's knowledge, information, and belief.

SHELDON PEASE.

Subscribed & sworn before me, this 27th day of June, 1871.

JA'S SHELDON,
U. S. Com'r.

108 (Indorsed:) U. S. circuit court, nor. district of New York. In admiralty. William T. Fraser vs. The propeller Wenona, &c. Costs, &c. George B. Hibbard, proctor for appellants, Buffalo, N. York.

It is hereby stipulated that the within bill of costs may be taxed & adjusted by the clerk of the United States circuit court, N. dist. of New York, at his office in Utica on the 29th day of June, 1871, at ten o'clock in the forenoon.

Buffalo, June 27th, 1871.

BENJ. H. WILLIAMS,
Proctor for Libellant.
GEORGE B. HIBBARD,
Proctor for Claimants.

109 At a term of the circuit court of the United States for the northern district of New York, held at the court-house in Canandaigua, on the 20th day of June, 1871—

Present, the Honorable Lewis B. Woodruff, circuit judge, &c., &c.

WILLIAM T. FRASER, LIBELLANT & APPELLEE,
v.
THE PROPELLER WENONA, HER TACKLE, &C., &c., William G. Fargo, Sheldon Pease, & Elisha A. Buck, claimants & appellants.

The appeal taken in this cause from the final decree therein of the dist. court of the United States for the northern dist. of New York, having been brought to a hearing before this court, & having been argued by George B. Hibbard, advocate for the claimant and appellants, and John Ganson, advocate for the libellant & appellee, & due deliberation having been had thereon, it is, on motion of George B. Hibbard, proctor & advocate for said claimants & appellants, ordered, adjudged,

110 & decreed, and this court now here doth order, adjudge, & decree that the said decree of the said district court, and each and all decrees made by the said district court in said cause, and each & all parts thereof, be, and the same are, in all things reversed and annulled; and that the libel in this action be, and the same is hereby, dismissed; and that the said libellant & appellee pay to said claimant & appellants their costs in this action, which have been taxed at the sum of four hundred and sixty-one dollars and thirty-four cents; and that the said claimants & appellants have execution therefor.

And it is further ordered, adjudged, & decreed that each & all bonds or stipulations given on the part of the said claimants and appellants in the said action be, and the same are hereby, cancelled.

(Endorsed:) U. S. circuit court nor. dist. of New York. In admiralty. W'm T. Fraser v. The Propeller Wenona, her tackle, &c., def't. Decree. George B. Hibbard, proctor for appellants. Filed June 30th, 1871.

111 United States circuit court, northern district of New York, ss:

Be it remembered that the *transmiss* of pleadings and proceedings herein from the district court of the United States for the northern district of New York, was sent here on appeal, & filed on the 19th day of December, 1870.

The appeal was duly argued by the advocates of the respective parties before his honor Lewis B. Woodruff, circuit judge, at the city-hall in Utica, on the 22nd day of March, 1871.

At the June term of said circuit court, 1871, a decretal order was made & pronounced herein, and entered on the 30th day of June, 1871, a copy of which is above annexed, by which it appears that the decree of the district court herein appealed from now stands reversed and libel dismissed, with costs.

Whereupon the said pleadings, proceedings, proofs, and costs as taxed, are now here, all attached together and annexed hereto; and the final decree herein is now duly enrolled, signed, & docketed for the sum of four hundred and sixty-one dollars & thirty-four cents, on this
112 15th day of July, 1871, in favor of Sheldon Pease, Elisha A. Buck, & William G. Fargo, claimants, of the propeller "Wenona," her tackle, &c., appellants, against William T. Fraser, appel'ee; and execution is prayed therefor, &c.

CHARLES MASON, *Clerk.*

113

114 (Indorsed:) U. S. circuit court, north. dist. of New York. In admiralty. William T. Fraser, libellant & appellee, vs. The Propeller "Wenona," her tackle, &c., Sheldon Pease, Elisha A. Buck, & William G. Fargo, claimants & appellants. Enrolled. Decree for costs to appellants against appellee, taxed at $461.34. George B. Hibbard, proctor. Filed July 15, 1871, 2 p. m.

115 To Supreme Court of the United States in admiralty.

WILLIAM T. FRASER, APP'LLANT,
vs.
WILLIAM G. FARGO, SHELDON PEASE, AND Elisha A. Buck, claimants of the propeller Wenona, her tackle, apparel, and furniture, appellee.

The petition of appeal of the above-named William T. Fraser, respectfully shows that a final decree was entered and dated on the 30th day of June, 1871, in the circuit court of the United States for the northern district of New York, in a certain cause of admiralty and maritime jurisdiction pending in said court, wherein the above-named William T. Fraser was libellant, and the above-named William G. Fargo, Sheldon Pease, and Elisha A. Buck were claimants and respondents, in and by which
116 said decree it was ordered, adjudged, and decreed, among other things, that the decree of the district court of the United States for the northern district of New York in the said cause be reversed, and

that the libel in said cause be dismissed with costs; which said decree of the said circuit court and each and every part thereof is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant prays that the said decree of said circuit court may be reversed, and that the decree of the United States district court for said district, entered in said cause on the fourth day of November, 1870, may be in all things affirmed, and that this appellant may be restored to all things which he has lost by said decree of said circuit court; and this appellant, as in duty bound, will ever pray.

Dated this 5th day of July, 1871.

WILLIAM T. FRASER,
By BENJ. H. WILLIAMS,
Proctor.

BENJ. H. WILLIAMS, *Proctor.*
JOHN GANSON, *Advocate.*

117 Supreme court of the United States. In admiralty.

WILLIAM T. FRASER
vs.
THE PROPELLER WENONA, HER TACKLE, APPAREL, AND FURNITURE.

The appeal of William T. Fraser to the Supreme Court of the United States from the decree of the circuit court of the United States is hereby allowed.

Dated July 6th, 1871.

N. K. HALL,
U. S. District Judge for the Northern District of New York.

118 (Endorsed:) Supreme Court of the United States. William T. Fraser vs. William G. Fargo and others. Petition. Benj. H. Williams, proctor, &c. Original filed July 8, 1871.

119 Circuit court of the United States, northern district of New York
In admiralty.

WILLIAM T. FRASER, L.,
vs.
THE PROPELLER WENONA, AND HER TACKLE, apparel, and furniture, William G. Fargo, Sheldon Pease, and Elisha A. Buck, claimants, &c.

The above-named libellant, conceiving himself aggrieved by the final sentence or decree of said circuit court, entered or dated on the 30 day of June, 1871, in the above-entitled cause, doth hereby appeal therefrom and from each and every part thereof, to the Supreme Court of the United States; and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

Dated at Buffalo in the said district, this 5th day of July, 1871.

WILLIAM T. FRASER,
By BENJ. H. WILLIAMS, *Proctor.*

BENJ. H. WILLIAMS, *Proctor.*
JOHN GANSON, *Advocate.*

120 United States circuit court, northern district of New York. In admiralty.

WILLIAM T. FRASER,
vs.
THE PROPELLER WENONA, HER TACKLE, APPAREL, and furniture, William G. Fargo, Sheldon Pease, and Elisha A. Buck, claimants.

The appeal of William T. Fraser from the decree of the circuit court in this cause, entered June 30, 1871, to the Supreme Court of the United States is hereby allowed, this 6th day of July, 1871.

N. K. HALL,
U. S. Dist. Judge.

(Endorsed:) Circuit court of the United States, northern district of New York. In admiralty. William T. Fraser, libellant, vs. The Propeller Wenona, her tackle, &c., William G. Fargo & others, claimants, &c. Appeal. Benj. H. Williams, proctor, &c. Original filed July 8, 1871.

121 UNITED STATES OF AMERICA, *ss:*

To William G. Fargo, Sheldon Pease, and Elisha A. Buck:

You and each of you are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the first Monday of December, 1871, pursuant to an appeal from a decree of the circuit court of the United States for the northern district of New York, made in a certain cause wherein William T. Fraser was libellant, against the propeller Wenona, her tackle, apparel, and furniture, in which appeal the said William T. Fraser is appellant and you are appellees, to show cause, if any there be, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Samuel Nelson, one of the justices of the said Supreme Court of the United States, this 6th day of July, 1871.

N. K. HALL,
U. S. Dist. Judge for the Northern District of New York.

BENJ. H. WILLIAMS, *Proctor.*
JOHN GANSON, *Advocate.*

122 (Indorsed:) Circuit court of the United States, northern district of New York. In admiralty. William T. Fraser, libellant, vs. The Propeller Wenona, her tackle, &c., William G. Fargo, & others, claimants, &c. Citation. Benj. H. Williams, proctor, &c. Filed July 8, 1871.

(Also indorsed:) Supreme Court of the United States. In admiralty. William T. Fraser vs. The Propeller Wenona, her tackle, &c.

I hereby admit due service of the within citation and a receipt of a copy of the same, July 7th, 1871.

GEORGE B. HIBBARD, *Proctor.*

123 Know all men by these presents that we, William T. Fraser, of the city of Buffalo, N. Y., and Jasper T. Crawford and Irvin McCord, of

Liverpool, Onondaga County, State of New York, are held and firmly bound unto William G. Fargo, Sheldon Pease, and Elisha A. Buck, in the sum of one thousand dollars, to be paid unto the said William G. Fargo, Sheldon Pease, and Elisha A. Buck, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, firmly, and administrators jointly and severally, by these presents, sealed with our seals, and dated this fifth day of July, 1871.

Whereas the above-bounden William T. Fraser has appealed, or is about to appeal, to the Supreme Court of the United States from the final decree of the circuit court of the United States for the northern district of New York, dated the 30th day of June, 1871, in a cause in which the said William T. Fraser was libellant, and the said William G. Fargo, Sheldon Pease, and Elisha A. Buck were claimants of the propeller Wenona, her tackle, apparel, and furniture, and were re-
124 spon*pon*dents. Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, if he fails to make his appeal good, then this obligation to be void; otherwise to remain in full force and virtue.

WILLIAM T. FRASER. [L. S.]
JASPER T. CRAWFORD. [L. S.]
IRWIN McCORD. [L. S.]

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

Jasper T. Crawford and Irwin McCord, being duly sworn, doth depose and say, and each for himself saith, that he is a resident and freeholder in Liverpool, county of Onondaga, in the State of New York, and is worth the sum of two thousand dollars over and above all his debts and liabilities which he owes or has incurred, and exclusive of property exempt from execution.

JASPER T. CRAWFORD.
IRVIN McCORD.

Sworn before me July 6, 1871.
[L. S.]

A. BARKER,
Notary Public in & for Erie Co.

125 STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

On this 6th day of July, 1871, before me personally came William T. Fraser, Joseph T. Crawford, and Irvin McCord, to me known to be the same persons described in, and who executed the above bond, and severally acknowledged that they executed the same.

[L. S.]

A. BARKER,
Notary Public in and for Erie County.

United States circuit court, northern district of New York. In admiralty.

WILLIAM T. FRASER
vs.
THE PROPELLER WENONA, HER TACKLE, APPAREL, and furniture.

I hereby approve of the foregoing bond, the form thereof, and the sureties thereto.

Dated July 6th, 1871.

N. K. HALL,
U. S. District Judge, Northern District of New York.

(Endorsed:) United States circuit court northern district of New York. In admiralty. William T. Frazer vs. The Propeller Wenona, her tackle, apparel, &c. Copy bond on appeal. Original filed July 8, 1871.

126 THE UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of William T. Fraser, libellant & appellee, vs. The Propeller "Wenona," her tackle, &c., Shelden Pease, Elisha A. Buck, and William G. Fargo, claimants and appellants.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Utica, in said district, this 16th day of November, A. D. 1871.

[SEAL.] CHARLES MASON, *Clerk.*

Supreme Court of the United States. William T. Fraser, libellant & appellant, vs. The Propeller "Wenona," her tackle, &c., Shelden Pease, Elisha A. Buck, & William G. Fargo, claimants & appellees. Transmiss on appeal.

(Indorsement on cover:) No. 330. William T. Fraser, plaintiff in error, vs. The Propeller Wenona, &c., William G. Fargo, Sheldon Pease, and Elisha A. Buck. N. New York C. C. U. S. Filed 15th January, 1872.

Supreme Court of the United States.

WILLIAM T. FRASER, *Appellant*,

vs.

THE PROPELLER WENONA, ETC., WILLIAM G. FARGO, SHELDON PEASE and ELISHA A. BUCK, *Appellees.*

BRIEF ON THE PART OF THE APPELLANT.

JOHN GANSON, *for Appellant.*

This is an appeal, by the libellant, from a decree, of the Circuit Court of the United States for the Northern District of New York, reversing a decree of the United States District Court for the Northern District of New York.

The libel in this action, is to recover damages sustained by a collision between the schooner Fremont and the propeller Wenona.

The District Court, by its decree, determined that the collision was occasioned solely by the fault of the propeller. The schooner and its cargo, consisting of salt, were lost, and the decree of the District Court awarded damages for their value. The Circuit Court reversed the decree, on a question of fact, holding that the propeller was free from fault and that the collision

was occasioned solely by the fault of the schooner. The alleged fault, on the part of the schooner, was in not keeping her course.

The opinion of the District Court is reported in the *4th of Benedict's Reports*, at page 207.

The opinion of the Circuit Court is reported in the *8th of Blatchford's Reports*, at page 499.

The libellant claims the propeller was at fault in the particulars specified in Judge Hall's opinion from page 219 to page 223. The libellant also claims that the schooner was not guilty of the fault attributed to her by the Circuit Court.

The determination of this appeal, involves the examination of that portion of the evidence which relates to the maneuvering of the propeller and the sailing vessel just preceding the collision.

Before making such an examination, the undisputed facts will be stated, that we can better determine what material facts are in dispute. The undisputed facts are as follows:

The collision took place at about nine o'clock in the evening of the twenty-ninth of November, 1869, off Port Stanley, near the middle of Lake Erie. The night was cloudy, dark and hazy, arising from a fine rain. (Printed page 20, original 59.)

The lights of the schooner were seen, by those in command of the propeller, in ample time to avoid the collision, and there was nothing in the locality to prevent a steam vessel from maneuvering as she chose.

The general course of the propeller, as shown by its compass, when it first made the lights of the schooner, was east three-quarters north. The propeller's com-

pass varied from the true course about three-fourths of a point, so that the propeller's general true course was east by north half north. (Printed page 20, original 59.) The schooner's course was south-west by west half west. (Printed page 10, original 29, 31.) These courses intersected each other, with a difference of only one point. The propeller, *at some time*, starboarded its helm. There is a dispute as to *when* this was done, and what the relative positions of the propeller and schooner were when the order to starboard was given. The propeller hit the schooner on the larboard side, between the stem and the fore rigging. The sterns stood at less than a right angle as the collision occurred. (Printed page 9, original 18, and printed page 11, original 33, 36, 41.)

The chief dispute upon the evidence, relates to the schooner's changing her course and the proximity of the vessels when the propeller starboarded. The propeller claims the schooner ported her helm, before the collision was imminent, and, thereby, caused the collision. The schooner denies this, and those in command of her, and on duty, at the time, testify positively that she was kept on her course till the collision became inevitable. (Printed page 11, original 32, 33, 34; printed page 13, original 38.) The order was given by the captain when they were close together. (Printed page 17, original 50.) ~~That~~ Her helm was then ordered hard a-port, but not in time to enable her to swing to starboard more than a point and a half, or two points. This was done to ease the blow. (Printed page 11, original 33, 34; printed 12, original 36; printed 13, original 38.) There is some dispute as to the course

of the wind. Those on the schooner state it as having been from about south (printed page 10, original 28; printed 13, original 39; printed 17, original 50½), varying a little from east to west of south. Those on the propeller state the wind as being about south southeast, a difference of two points to the eastward of south.

The propeller and the schooner, when their respective lights were first made, were pursuing such courses as to bring this case, as the vessels approached each other, within the 15th and 18th Articles of the Act of Congress, approved April 29, 1864, entitled "An Act fixing certain rules and regulations for preventing collisions on the water."

13 *U. S. Stat. at Large*, 58 *and* 60.

Article 15 of that act provides that "if two ships, "one of which is a sailing ship, and the other a steam-"ship, are proceeding in such directions as to involve "risk of collision, the steamship shall keep out of the "way of the sailing ship."

Article 18 provides that "where, by the above rules, "one of two ships is to keep out of the way, the other "shall keep her course, subject to the qualifications "contained in the following article," which it is not, in this connection, necessary to quote.

The courses of the propeller and the schooner intersected each other, there being a divergence of one point only between them. The position of the propeller, before it reached the point of intersection, would present to its view the green light of the schooner a little off the port bow. The master of the propeller says, he first made the green light of the schooner in about that position, or nearly dead ahead, when the vessels

were a little short of two miles apart. (Printed p. 21; original 60; printed 22; original 63.) Those on the schooner, when about the same distance from the propeller, made its masthead light, and soon after its colored lights, about ahead, tending toward the windward of the schooner's course. (Printed p. 9; original 27, 28; printed 11, original 32.)

Under these circumstances, it was the duty of the schooner, as the vessels approached each other and when near enough to involve the risk of a collision, to keep her course. The mate and wheelsman testify positively that the schooner did keep its course (printed p. 11; original 32, 34; printed 13, 38) until the propeller was coming directly onto the schooner, and was only a short distance off, when its wheel was put hard a-port under the captain's order, to ease the anticipated blow. This affirmative evidence i to be believed instead of mere negative evidence. It is to stand until it is overborne by other proof. There is no evidence of a positive character in opposition to this affirmative testimony. On this point, the most that can be claimed for the respondent's evidence is, that it conveys *opinions*, rather than facts, in opposition to the positive evidence on the part of the libellant. That kind of evidence cannot weigh against positive proof.

21 *How.*, 372, 382, *New York and Liverpool U. S. Mail Steamship Co. vs. Rumball.*

6 *Conn.*, 735, *Johnson vs. Scribner.*

1 *Cow.*, 711, 748, *Woodcock vs. Bennett.*

29 *N. Y. R.*, 315, *Wilds vs. The Hudson R. R. Co.*

The burthen is on the propeller to show that it did everything in its power to keep out of the way of the schooner. This it had a right to do, as it was in the open lake, by either porting, or starboarding, its wheel, or by slackening its speed, or by stopping and reversing its engine, if there was risk of a collision.

If a steamer makes the light of a sailing vessel, at a sufficient distance to avoid coming in contact with the vessel, and a collision ensues, *prima facie* the steamer is chargeable with fault, and the steamer must exculpate itself by clear and satisfactory evidence, or she will be held liable.

8 *Wall.*, 302, 304, *The Carroll.*
18 *How.*, 570, *Oregon vs. Rocca.*
21 *How.*, 372, 384, *above cited.*
Lowndes on Collision, p. 214.

It appears by the evidence of the master, look-out, mate and wheelsman of the propeller, that when they first made the *red* light of the schooner, it was from a point and a half to two points off the propeller's starboard bow, and that the schooner was then from a quarter to half a mile off. (Printed p. 21, original 61; printed 22, original 64; printed 24, original 69, 70; printed 25, original 71; printed 26, original 76; printed 27, original 78.) The combined speed of the two vessels was about fifteen miles an hour; they would approach each other at the rate of a mile in four minutes. Those in charge of the propeller testify they had, previous to this, seen the green light a point and a half or two points off the propeller's starboard bow. When the green light disappeared, and the red light appeared, on the starboard

bow, those on the propeller ought to have known that the schooner was passing to the port of the propeller. The space then between the two vessels, being, as the master testifies, not less than one quarter of a mile, gave ample time for the propeller to have ported and to have passed to the windward and a-stern of the schooner, especially as they must have known the schooner was making some leeway. Instead of doing this the master of the propeller ordered his wheel hard a-starboard, which swung the bow of the propeller to port, and in a direction to cross the course on which the schooner was then known to be proceeding. The indications to those in charge of the propeller were, while the vessels were passing this quarter of a mile, that the vessels must collide, *for the red light, although the propeller was continually swinging to port, continued to close in on the propeller's course, till just as the vessels came in contact.* At the instant they came in contact, the red light of the schooner had got nearly in front of the propeller's stem. (Printed p. 25, original 71½.)

The master of the propeller testifies that, before seeing the red light, he saw the green light of the schooner, and it then "bore right dead ahead, or near that,—if "anything, a little on the starboard bow." (Printed p. 21, original 60; printed p. 22, original 63.) That he then gave his wheelsman an order "to put his wheel "a-starboard. That he gave that order *immediately on "making the green light.*" (Printed page 22, original page 63.) The order was given before the master of the propeller had taken any time to ascertain the schooner's course. It was precipitate. There was not

any occasion for giving the order then. The vessels were then, he says, two miles apart. The order to starboard, followed up by the order hard a-starboard, it is evident caused the collision.

In the case of *The Jane vs. The Great Eastern*, Dr. Lushington says: "I am of the opinion that the 15th section does not mean that when two vessels simply discern their lights at a considerable distance, the 15th section is binding, but that it becomes applicable *when they have ascertained their respective courses.* * * * It is not merely a discovery of the light, but *knowledge of the manner in which the vessel is sailing, and the course she is pursuing, which must govern them with regard to this section.*"

Holt's Rule of the Road, p. 171.
Lowndes on Collisions, bottom of page 27.
Swabey, 135, *The Cleopatra.*

It is plain, from the language of the act of Congress, and from the adjudications upon it and similar acts, that the rules therein prescribed are not binding until the "*risk of a collision*" becomes apparent. Until such "risk" does appear, it is evident that those in command of approaching vessels cannot know what precaution it is necessary to take to avoid the collision. The relative position and courses of the two vessels must be known before any intelligent or safe action can be taken. If time is not taken to obtain such knowledge, any maneuver may be the very one which should not be made.

Lowndes on Collisions, at page 27, says: "With "regard to the time when the helm is to be altered,

"a medium must be kept between precipitancy and "procrastination. *When a ship is seen at a considerable* "*distance, time ought first to be taken for perfectly* "*observing her probable course, after* which any altera- "tion of the helm, which may be requisite, should be "made in such good time that the vessel may be kept ' constantly under command."

For these positions, reference is made to authorities not at my command. But the principle stated is obviously correct. If the approach of the vessels is such "as to involve the risk of a collision," and such risk *is ascertained*, then the measures "to keep out of the way" are to be taken. If doubt exists in the case of a steamer as to the proper course to be taken when nearing a sailing vessel, arising from difficulty in determining the course of the sailing vessel, then the steamer should "slacken her speed, or, if necessary, stop and "reverse."

13 *U. S. Stat. at Large, p.* 61, *art.* 16.
Holt's Rule of the Rule, 200, *The Joseph Staker vs. The Karla.*

The mere fact that the green light of the schooner, when first seen from the propeller, at a distance of two miles, was near dead ahead, did not show anything to the propeller, by which it could be determined *at once* what order should be given. For the vessels were then two miles apart. From the time the propeller made the schooner's *red* light off its starboard bow, the vessels "were proceeding in such directions as to involve risk of collision," and the propeller, by starboarding its helm, *increased* that risk. The vessels were then over

a quarter of a mile apart, and the propeller was at fault for not porting or stopping. There was then ample time to do both. (Printed page 21, original 61 ; printed page 22, original 63, 64.)

The master of the propeller furthermore violated the 16th Article of the Act of Congress, above cited, by not stopping or slacking the speed of the propeller. He ought to have known, the moment he made the schooner's red light on his starboard, that, under a starboard wheel, he was "approaching the schooner so as to involve risk of collision." He was then, as he testifies, at least a quarter of a mile from the schooner. In that distance there was ample time to stop the headway of the propeller, or to have ported and passed to the windward and a-stern of the schooner. If this had been done, then there would not have been any collision. *This was apparent at the time.*

The respondent's evidence fails, therefore, to exculpate the propeller. It, in fact, shows the collision is attributable to the want of proper precautions on the part of the propeller.

The testimony of the libellant and his witnesses, shows that the schooner performed her duty by keeping her course, and that the propeller was solely at fault.

The evidence, on the part of the libellant, shows great care, caution and attention. The mate and captain of the schooner, seeing that the propeller was steering directly for the schooner, so as to involve risk of a collision, ordered a torch lighted, to attract the attention of the propeller, and warn it of the danger. The first light from the torch did not apparently attract the attention of the propeller, for

it continued to bear for the schooner. A second flash-light from the torch was made. The man at the wheel was cautioned, at the same time, to keep the schooner steady on her course. He testifies he did so. (Printed page 11, original 32; printed page 13, original 38½.) This is a very important circumstance in this case, as it shows that the persons in command of the schooner were on the alert, and taking unusual pains to warn the propeller of the danger. (Printed page 17, original 49.)

There is not any dispute as to the fact that the propeller starboarded its helm, but the libellant's and respondent's witnesses differ considerably as to the then relative position of the two vessels, and as to the distance there was then between them.

The libellant's witnesses testify that when the second torch-light went out, the vessels were very near each other. (Printed page 16, original 47; printed p. 18, original 53). It was at this time the libellant himself stepped on top of the cabin. The vessels were then, as the libellant testifies, from one-quarter to half a mile apart.

The master of the propeller testifies that he made the red light of the schooner after the second torch-light went out, and, that, when he made the red light, the vessels were from a quarter to half a mile apart, not less than a quarter of a mile. He testifies that some little time elapsed between the disappearance of the second torch-light and the appearance of the red light of the schooner.

The master of the propeller testifies that he gave the order, hard a-starboard, as soon as the red light of

the schooner appeared. He testifies furthermore that he did not give order by the bells to the engineer to stop and back until he saw he could not clear the schooner. (Printed page 21, original 62.) The libellants' witnesses testify that the propeller, suddenly, when very near the schooner, swung to port and came right onto the port bow of the schooner, showing the green light, and shutting in the red light just as the vessels were coming in contact. This was of course when the propeller's helm was put hard a-starboard.

It is evident that the distance between the two vessels, when the propeller put her helm hard a-starboard and swung to port, was about as the libellant's witnesses state, and not so great as that given by the respondents' witnesses. This will more satisfactorily appear when we bear in mind that the bells, to stop and back, were rung in great haste. The engineer says when he got the bells he was standing by the starting bar, and immediately executed the order. That this was about thirty seconds before the vessels collided; that he got the engine reversed, in about five seconds, and it had made about six backward revolutions as the vessels came together. (Printed page 28, original 80, 81.) The captain and mate of the schooner heard the jingling of the propeller's bells when the propeller was a very short distance from the schooner, not more than one hundred feet off. (Printed page 11, original 33; printed page 17, original 50.) There was evidently a sudden emergency when the signals to the engineer, were given, for the captain of the propeller did not check his speed before giving the order to stop, and he repeated the order before the engineer had executed the first one, fearing the

engineer would not get the first order. (Printed page 21, original 62.) There was haste in the maneuver, and, before it was made, it is evident, the vessels were in a dangerous proximity. The blame rests with the propeller for getting the vessels into that position, and it must be held liable.

15 *Wall.*, 676, *The Lucille.*
4 *Wall.*, 509, 512, *Bently vs. Coyne.*
8 *Wall.*, 302, 304, *The Carroll.*
9 *Wall.*, 420, *The Fairbanks.*
See Law Register for February, 1870, *page* 118.

It is evident that the propeller's headway was not materially checked when the vessels collided. All of the witnesses testify that the propeller was going ahead. The wheel was throwing water away from the stern, as the libellant testifies, as the vessels came together. The engineer testifies that he had only thirty seconds to stop and reverse his engine.

The case of the propeller is a very extraordinary one. By it the claim is made that it was ~~running~~ swinging to port from the time the first order to starboard was given till the collision occurred, and that when it began so to swing the schooner was on its starboard, and nearly two miles distant. It swung to the larboard all of this distance, and was not steadied. (Printed page 21, original 61.)

If the propeller, having the green light of the schooner two points off its starboard bow, starboarded its helm, and kept it so, till the order hard a-starboard was given, its red light could not have been seen at all,

from the time it made the schooner's green light to the time of the collision, even if the schooner had ported and gone off before the wind. Besides the vessels could not have collided at all under those circumstances.

The appellant's theory is, that the propeller was to the leeward of the schooner's course, and never passed to the windward of that course at all, but kept to the leeward with a starboard helm. The collision could never have occurred, if that had been the relative positions of the vessels when the propeller starboarded.

The vessels cannot be brought together in the manner they came together, without bringing the propeller to the windward of the schooner's course, before the order to starboard was given. By thus placing the vessels, the manner of the collision is a rational one.

The wheelsman's opinion, that if the schooner had made off, the same appearance of the propeller would have been presented to those on the schooner, was based on the idea that the propeller had got off the schooner's weather bow, before starboarding. He did not state the opinion he gave on the hypothesis that the propeller was under a starboard wheel, swinging to port, with the schooner's green light two points off the propeller's starboard bow, because, under those circumstances, the opinion given would be an absurd one.

The question, relative to the *position* of the schooner's lights, is not of any importance in this case, as it affirmatively appears they were so placed as to be visible to, and were seen by, the master, mate and look-out of the propeller, as they admit, at the distance of two miles. It is not claimed by them that they were, in any respect, misled by the position of the schooner's

lights. Hence, if they were wrongly placed, it is not of any importance in this instance.

Swab., 89, *The Vivid.*
3 *Mitchell*, 757, *Flavia Gioja.*
Swab., 22, *The Juliana.*

But the libellant claims that the provision of the statute, relative to carrying lights on sailing vessels, does not designate the place where they are to be located. The statute is complied with if they are so placed as to be fairly visible. The phrases "on the starboard side" and "on the larboard side" of the vessel, do not relate to the sides of the hull of the vessel, but to the side on which the reflection of the light shall be seen. The green light is to be exhibited on the right hand, and the red on the left hand.

10 *Jur. N. S.*, 965, *The City of Carlisle.*
8 *Mitchell*, 943, *The City of Carlisle.*
The Emperor vs. Lady of the Lake, Privy Council, 8th March, 1865.

So far as the decision of this court, as an appellate tribunal is concerned, it will, on the disputed evidence, give great weight to the decision of the District Judge, who had the advantage of seeing the witnesses as they testified, and could form a better judgment of their intelligence, than can be ~~framed~~ formed simply from a perusal of the written evidence. Furthermore, there must be a decided preponderance of evidence on the part of the appellants to justify a reversal. In order to reverse the decision of the District Court on the facts, the court

must not merely entertain doubts whether the conclusion of the District Court, on the points in contention, was right, but it must be convinced it was wrong.

The decree of the Circuit Court should be reversed and that of the District Court should be affirmed, with costs.

JOHN GANSON,
For Appellant.

Supreme Court of the United States.

WILLIAM T. FRASER, *Appellant*,

vs.

THE PROPELLER WENONA, ETC., WILLIAM G. FARGO, AND OTHERS, *Respondents.*

BRIEF, ETC., ON THE PART OF THE RESPONDENTS.

GEORGE B. HIBBARD, *Buffalo, N. Y., for the Respondents.*

This is an appeal from a decree of the United States Circuit Court for the Northern District of New York, reversing a decree of the District Court of that District, in a case of collision. The suit was commenced *in rem*, in admiralty, in the District Court, by the libellant, against the propeller Wenona, etc. The decree of the District Court was in favor of the libellant. This decree was reversed by the Circuit Court and the libellant has appealed to this court. The case in the District Court is reported in *4th Benedict*, (*The Propeller Wenona*, *4th Benedict*, 207,) and in the Circuit Court in *8th Blatchford*, (*The Wenona*, *8th Blatchford*, 499.)

Some of the facts in the case are undisputed.

The collision was between the schooner Fremont and the propeller Wenona; and by the collision the

Fremont and her cargo were sunk and lost. The collision happened on Lake Erie, about nine o'clock in the evening of the twenty-ninth day of November, 1869. The wind was to the eastward of south. There was no fog upon the water, though there was a little haze and a little drizzling rain. (*Record*, 20, 23, 9.) There was, however, no difficulty in seeing signal lights, and the proofs, on both sides, show that when the vessels first saw each other's lights, they were about one and a half or two miles apart, as is shown by statements of distance and estimates of time, (21, 22, 23, 24, 25, 27, 29,) and the libel itself states colored lights to have been visible apparently about a mile and a half. (4.)

The speed of the propeller was about ten miles an an hour, (28, 20,) and that of the schooner probably about five or six miles an hour. (*See Libel*, 4.)

The original course of the propeller, by her own compass, was east three-quarters north, but as is common, her compass so varied that her true course was east by north half north. (20, 21, 25.) The original course of the schooner by her compass (there is no proof whether or not it varied, as compasses almost universally do) was, as she claims, early in the evening, south-west by west, and later south-west by west half west. (13, 15.) Wherever her course and the wind were, she had a good full on, before she made the changes of course, she did after she saw the Wenona. (10, 12.) *That she made at least two distinct, and very considerable, changes of course, after she saw the Wenona, and before the collision, is beyond question on all the proofs, (see Point Second, IV.,) and is put beyond possibility of dispute by the finding of facts in the case, that the pro-*

peller did not port. (*See Opinion of District Court, 4th Benedict,* 212, 213, 221; *and of the Circuit Court, 8th Blatchford,* 504, 506.) The signal lights of the schooner were beyond question bad. They were not placed on the sides of the schooner, but both on the pawl bit. They were not properly screened. They were separated by an inch and a quarter board, some nine or ten feet long, (though they were from a foot and a half to twenty-two inches apart,) and though they reached only about a foot above the rail, the bowsprit twenty-two inches in diameter, and all of it, of course, reaching above the rail forward, formed a continuation of the screen board. (18, 17, 9, 10.) It was impossible to see either, therefore, dead ahead. It was impossible to see both together. (25, 27.) Heeled over to starboard, somewhat, as the schooner would be if she was making leeway at all, and with her rail rising forward, it would be impossible that her red light could be seen at all until she headed, as she did before the collision, so decidedly across the course of the propeller.

Even the District Court found the signal lights of the schooner to be bad. It decided that the schooner made one change of course before the collision, and that that change was when the vessels were a considerable distance apart. (*4th Benedict,* 214.) It *utterly ignored the proof,* (and does not refer to it in stating what the testimony was,) *so absolute even on the part of the schooner,* (14, 17, etc.,) which, taken in connection with the libellant's proof, shows beyond question that the schooner made *another and prior change of course,* as the Circuit Court has substantially found was the case, (*8th Blatchford,* 509, 510,) or that one continuous

change was begun long before the change found by the District Court. It is even necessary to find that such prior and important change was made, it is submitted, to make the opinion of the District Court consistent with itself, to make the proof on the part of the schooner at all consistent with truth, more especially when the District Court finds that the propeller *did not port her wheel*, (*4th Benedict*, 212, 213, 221,) as, on the trial, it was the whole effort of proof (14, 17, etc.) on the part of the libellant to show she did.

It is proposed to show—

First. Generally, that the propeller was not in *fault.*

Second. That the schooner was in *fault*, that she committed the distinct *faults* of having bad signal lights, and improperly changing her course.

Third. That the faults of the schooner produced the collision, this involving more close consideration of the conduct of both vessels, and

Fourth. That upon fact, principle and authority, the decree of the Circuit Court should be affirmed.

POINT FIRST.

The propeller was in no degree in fault.

I. Fault, in collision cases, is not some point of conduct upon which criticism may be made. It is not even some point of conduct which a court may think to be even erroneous or a mistake. To condemn a vessel because, in the opinion of any court, she may have been in error or mistake, when it is

not found that she committed distinct *fault*, would be to substitute mere individual opinion, no matter how intelligent, for the science of the law—science as applicable to collision cases as any others. To commit a *fault*, is to violate some statute, some rule, some custom, not merely to err.

Collision cases can never be decided consistently with each other; nor can precedent establish practical and uniform rules of navigation—rules which should, above all others, be plain and consistent—without the clear apprehension and the steady application of these principles.

II. Where a *fault* is established upon the part of a colliding vessel, that vessel should be held entirely responsible for all consequences, unless it affirmatively appears, that with that *fault* known to the other vessel, (there being no possibility of her being misled by it,) she also has committed affirmative *fault*, which contributed to the collision.

Faults, in such cases, are but few. They should be but few; and statutes, rules, or customs, in violation of which such faults only can exist, should be plain and few, that plain and practical men, compelled to act with but little chance for deliberation, and none for consultation, should be ever ready for their instant application.

The full recognition of the principles above stated are not to be disputed, it is repeated, in substance, if law is a science, if there be *law*, which is rule, with respect to collision cases.

III. The propeller was not in fault in this case.

Upon full and accurate consideration of the testimony, this will be seen most plainly. She violated no law, rule, or custom. To violate either, she must have done something wrong with reference to her then situation, to the appearnces, the guides for her conduct, recognized by the maritime law. It is but commonplace to say, (and yet how often in collision cases is it not recognized!) that it is substantially immaterial to conclude that if something had not happened, the collision would not have occurred. In any collision, if the most innocent vessel, it may be said in illustration, had done anything else, had violated every possible rule, the collision would not have happened. The question is: Did the vessel conduct herself with ordinary care, skill and judgment, under the then circumstances, and with reference to appearances which should guide her—in short, did she, under such circumstances, and with reference to such appearances, observe the rules prescribed for her then to observe.

IV. That the propeller was well officered, that her watch was perfect, is beyond question. Her master, second mate, wheelsman, lookout and engineer, were at their places. (20, 23, 26, 27.) That they were each and all competent, is not to be questioned. That they saw the schooner about one and a half or two miles off, and is beyond dispute. That they continued vigilantly to watch the schooner, doing nothing else, from that time to the collision, each devoting himself to the performance of his duty, is not to be doubted

on the proof, and is substantially found by the District Court. Is it to be determined that such abundantly competent men, properly placed, altogether vigilant, occupying places for the proper exercise of judgment, infinitely better than any other, are in fault; and the responsibility for such a loss as this should fall upon the propeller, when two well established faults, the worst she could commit, as will be shown, were committed by the other vessel?

V. That the propeller did not commit any fault will appear from general consideration of her course and conduct. Such consideration will require only statement of the leading facts respecting her navigation.

1. The propeller's signal lights were good. (20, 22, 23, 29, 30.) The singular attempt to show they were not, upon the theory of some of the libellant's witnesses, (29,) is of no sort of consequence. The quality of the propeller's lights had not, nor had anything connected with them, anything to do with the collision.

2. The propeller's true course was east by north half north. (20, 25.) She first saw the torch-light of the schooner substantially dead ahead, or if anything, about a quarter or half a point on her port bow. (20, 21, 23, 24.)

The light was then, as has been stated, about one and a half or two miles off. (22, 21, 23, 24, 26, 27, 13.) This light was simultaneously seen by master, second mate and lookout. This was about eight or

ten minutes, as was estimated, before the collision. (26, 21, 13.) In a short time after this first torch-light went out, the *green* light of the schooner was first seen from the propeller, substantially dead ahead, or if anything, a little on the propeller's *starboard* bow. (21, 23, 24.) This, of course, indicated that the schooner was passing to starboard, and would pass the propeller starboard to starboard. The master of the propeller thereupon ordered the wheel of the propeller a-starboard. (21, 24, 25, 26.) This, as is estimated by different estimates, was from five to eight minutes before the collision. (21, 24, 27.) The schooner then showed a second torch-light, and her *green* light, except (when not visible by reason of the glare of torchlight, which, however, would not burn but a few seconds, (18,) alone continued in view, *opening on the propeller's starboard bow, from dead ahead to one and a half or two points on the propeller's starboard bow,* (21, 23, 24, 27,) *thus showing beyond all question, that the vessels were not coming together; and that, down to this time, there was no danger of collision, for the propeller was swinging slowly to port all the time, and she did not put her wheel a-port.* These things the District Court finds.

See Opinion, 4th Benedict, 212, 213, 214.

And, as has been established, and as must have been the consequence, (especially as the District Court finds the propeller swung several points to port before the red light of the schooner appeared,) no matter what may be thought about "leeway," of

which, as to the courses of the two vessels, as the District Court finds, substantially, there could not be more than one-half or three-quarters of a point, *and the green light alone was visible, and rapidly opening on the propeller's starboard bow, thus showing that there was no danger or appearance of danger; nor would there have been danger had not the schooner changed her course as will hereinafter appear, twice, or with one long continued change of course, commenced long before the captain of the schooner gave the order for change — a change commenced without his knowledge.*

What then is the rule under such circumstances; what need a steam vessel only do? Starboard her helm and open the green light on her starboard bow as this propeller did. The rule is the same between steam and sail vessels as between steam vessels. There is no danger in either case. "Green light dead ahead. Starboard the helm." "Green light on the starboard bow. Starboard the helm."

American Rule of the Road, 127.

The very doggerel states it:—

"Green to green, or red to red,
Perfect safety. Go ahead."

Id., 226.

Why, in the time the green light continued to be seen, should the propeller do any more than continue to open it on her starboard bow? Why slacken speed? Why do anything more when there was no indication of danger? Are we bold

enough to say that such a watch as she had, so placed, and vigilant as they were, committed fault?

The theory of the libellants, their original theory, did not include such a charge. Their original theory was that the propeller ported her helm and ran off on the schooner's port bow. (11, 12, 17.) This is, of course, most abundantly disproved, as above appears. And, beside, the District Court, it is repeated, finds that the propeller did not port her helm, as the Circuit Court also finds.

It follows, that down to this time, the propeller did not commit any fault. Certainly she did right to starboard. Certainly she opened the green light on her starboard bow fast enough. Certainly there was no reason why she should slacken her not very considerable speed of ten miles an hour. What *fault* had she committed? Her conduct can not be judged to have been even erroneous.

The green light having thus continued to open down to this time certainly the propeller had committed no fault. Certainly she had made the proper and sufficient change of helm. She had made the change of helm early enough.

The Ericsson, Swabey, 38.

3. There was no reason why she should stop and watch, as has been intimated by the District Court, the light or any change of light upon the part of the schooner. With the green light in view, and constanly opening on the propeller's starboard bow, there was no possibility of misunderstanding the situation, no occasion for hesitancy,

no indication of danger. There is no rule requiring a vessel, when a plain light, of plain significance is seen, to stop and watch a change of bearing.

The Queen, 8 *Blatchford*, 234.

4. Nor was there any fault in the propeller's speed. There was nothing in the character of the night, for, as is beyond question, the signal lights of a vessel could be seen, and in this instance were seen probably for the whole distance, which by statute, they are required to be visible. The night was not foggy, but merely a night with light mist and a little rain, which did not prevent signal lights, the guides for navigation in such cases, from being seen. (20, 23, 9.) The simple and sensible rule in such cases is, that vessels shall proceed at such speed that when another vessel's lights can be, or are seen, they being the guides in such cases, (and in this connection it may be observed that in some of the cases where the speed of vessels on "hazy" nights is condemned, that word is used as synonymous with "foggy,") there shall be opportunity to avoid her.

The Great Eastern, *Holt*, 167, 180, 181.
The Sylph, 4 *Blatchford*, 24.

And certainly, when the light of this schooner could be and was seen about two miles, (the statutory distance which they should be visible,) there was no fault to be found with the speed of the propeller. There was every opportunity for avoiding a collision necessary in such a case. When vessels

are seen that distance apart the absence of a lookout even is not considered a fault.

The Maria Martin, 12 *Wallace*, 31, 42.
The Ariadne, 2 *Benedict*, 472; *and* 7 *Blatchford*, 211.
The Fannie, 11 *Wallace*, 238.

(That in some cases speed, combined with other faults, or when the speed is such that *under the circumstances*, after an approaching vessel can be seen, there is not opportunity for collision to be avoided, that in some such cases speed, as for instance in *The Rose*, 2 *W. Rob.*, 2; *The Iron Duke*, *Id.*, 384; *The Dispatch*, *Swabey*, 138, where the vessels were right upon each other before the vessel in fault saw the other, or *The Europa*, 3 *W. Rob.*, 70, and *The Northern Indiana*, 3 *Blatchford*, 92, where the speed was great, and there was no proper lookout, has been held a fault, has nothing to do with this case. *Speed is not a fault in itself.* (*Shearman and Redfield on Negligence*, 535.) *It is only a fault, can only be a fault, when it prevents the safeguards against collision from being available. The speed of this propeller* certainly had nothing to do with *causing* this collision. There was no reason why she should proceed at less speed on this night than any other.)

VI. Without fault down to the time the green light continued to be solely visible off the propeller's starboard bow, the propeller cannot be in fault at all, unless she afterwards committed it; and com-

mitted it when, having thus seen the green light opening on her starboard bow, she concluded and had a right to conclude, (for it is commonplace to say that each vessel has a right to suppose that the other will obey the rules of navigation, *The Ariadne*, 2 *Benedict*, 474, 7 *Blatchford*, 211) the vessels were going clear of each other.

The propeller had kept swinging steadily to port. This the District Court finds as a fact, and finds also that the propeller did not put her wheel aport, and, determining as it does, how the vessels made each other, settles the fact beyond controversy. Its finding, as has been seen, is in entire consonance with the proof. It is repeated, then, these findings of the District Court show there was, down to the period of the propeller's progress so far considered, *not one indication of danger*. These findings are also concurred in by the Circuit Court.

At this time, and when the green light had opened until it was about one point and a half or two points on the propeller's starboard bow, the green light suddenly became invisible, and the red was seen. Estimates of time and distance, in collision cases, are of course uncertain, (*The City of Paris*, 9 *Wallace*, 634,) but this red light is estimated by those on board the propeller to have been visible a minute or two before the collision, (21, 26; the wheelman's estimate of time would make it somewhat different, but this is one of those discrepancies, in such particulars, always occurring in such cases, 25.) The red light first appeared about one and a half or two points off the propel-

ler's starboard bow, appearing as soon as the green light became invisible. (21, 25, 26.) The schooner was estimated by those on the propeller to be then from an eighth to a half a mile off on the propeller's starboard bow, and, as has been seen, from one and a half to two points off the starboard bow. (24, 25, 26, 21.) The schooner was seen running in a direction to cross the propeller's course, with her sails full, well before the wind. (21, 26.) When this red light was seen thus alone on the starboard bow, it at once indicated that the schooner had changed her course, and was crossing the bows of the propeller, (and that she had done it will be placed beyond question when the schooner's proof is considered,—see *Point Second, IV.,*) *and this was an earlier and different change from any considered by the District Court—from any made pursuant to the orders of the captain, when he came on deck.* The propeller was then swinging to port, under her starboard wheel. The schooner had suddenly changed her course, but was still off the starboard of the propeller. What should the propeller do in this sudden emergency, this sudden change from safety to peril, produced by the fault of the schooner? Precisely what she did do. Put her wheel hard a-starboard, (21, 24, 26,) and, as was done, stop and back the engine of the propeller. (21, 28.) What else could have been done? The peril was produced by the schooner. There was no indication of danger until the red light was seen. Should the propeller then have put her wheel a-port, when she was swinging to port at

the time, when she would have had to overcome that swing before her port wheel would be felt?

The District Court intimates that the wheel of the propeller should have been put a-port; and yet it finds that the schooner's change of course, (ignoring utterly the testimony which shows that there was a change before this,—see *Point Second, IV.*,) was not a fault! and yet in that space, that time, the District Court would intimate, the propeller could commit two faults! The vessel was so near the propeller then, that her change of course was of no consequence, yet she was so far off that the propeller could be altogether in fault even then!! The District Court also finds that when the green light was alone visible, and was opening on the propeller's starboard bow, under the propeller's starboard wheel, that the propeller's wheel was put "in the wrong direction"!!! Both conclusions are the same. Both, it is respectfully claimed, are wrong, upon authority and in reason.

Suppose the propeller, under the circumstances of sudden peril produced by the faults of the schooner,—her bad lights, her change of course,—suppose the propeller then was in error, which she was not, yet she was not responsible under familiar rule. Does it not savor of temerity, to say, that navigated as this propeller was, by a most competent and a most vigilant crew, so placed that every appearance was seen and could be fully understood —that their acts shall be determined to be bad, beneath such lights as are only afforded by evi-

dence? and this too, when, as is seen and will be more conclusively shown, the schooner had committed two such important faults, as to navigate with bad lights, and to change her course, as she undoubtedly did!!

VII. The conduct of the propeller was faultless, upon authority.

See especially

The Queen, 8 *Blatchford*, 234.
The Potomac, 8 *Wallace*, 590.
The Scotia, 14 *Wallace*, 170, 181, *and* 7 *Blatchford*, 208.

In this last case the general rule is most excellently stated by this court: A steam vessel "*is required to take no precautions when there is no apparent danger.*"

Nor does the case of

The Gray Eagle, 9 *Wallace*, 505,

at all affect the question. In that case, one vessel by misfortune had lost her light, (she was not willfully carrying a bad one as in this case,) and she was *rapidly closing in on the Gray Eagle, as should have been perceived by the Gray Eagle, (not opening on her bows, and then changing course and running across her bows as in this case,) and, above all, the vessels were not as in this case, passing each other, so as to show the other the same colored lights—the very assurance of safety.*

POINT SECOND.

The schooner was guilty of two distinct faults, the worst, the only ones, substantially, that she could commit. These faults were fatal, and as will be seen, caused the collision. She had bad signal lights. She changed her course. She caused the collision.

I. The allegations of the libel, *sworn to by the master of the schooner, and the libellant, who was on the schooner at the time of the collision*, states a case widely different, in important features, from the case claimed on the trial. This covers the libellant's case with suspicion.

The William Penn, 3 *Wash. C. C. R.*, 484.
The Aurora, 1 *Lushington*, 327.

The lights of the schooner are alleged to have been on the vessel's *side*, etc.

The torchlight of the schooner was alleged to have been displayed when the light of the propeller was first seen, (which the libel alleges was when the vessels were, apparently, a mile and a half apart,) and was kept lighted, etc., until "*on or about the moment of the collision.*" It was only lit twice, and the master of the schooner swears it would burn only two or three seconds. (18.)

The libel alleges that very soon after the white light was seen, the red and green light of the pro-

peller was seen apparently about a mile ahead of the schooner, and that the hull of the propeller was soon discovered on the port bow of the schooner, etc. The District Court finds that this was not so, for, as has been seen, it finds that the propeller did not port her helm, and therefore could not have got off the schooner's port bow at any such time, unless, indeed, it might be by the schooner's change of course.

II. The schooner's signal lights were bad. They were bad as a matter of fact. They were not on the *side*, but were both placed on the pawl bit. They were not properly screened. They did not show from dead ahead to two points abaft the beam. They could not be both seen from dead ahead, at once, and the bowsprit obscured them from vessels dead ahead; and, heeled over to starboard as this vessel must have been if she was making so much leeway as is claimed, her red light could not have been seen by a vessel off her port bow when it was so little above the rail. These things, it is claimed, the proofs show. (18, 16, 17, 9, 10, 25, 27.) The District Court held this light to be bad, and it was bad, upon authority.

The Urania, *Swabey*, 253.
The Magnolia, *Swabey*, 124.
Lady of the Lake, *Holt's Rule of the Road*, 38.
Lowndes on Col., *Preface*, *VI.*
The City of New York, 8 *Blatchford*, 194.
The Ariadne, 7 *Blatchford*, 211.

But the District Court held this, the gravest fault a sail vessel could commit, to be no fault substantially, because the *green* light of the schooner was seen at so great a distance. If there was one particle of truth in the case alleged in the libel, that the propeller was off the schooner's port bow; if there is any truth in the testimony on the part of the schooner, that the propeller ran off on the schooner's port bow, *the red light of the schooner would have been seen had it been a proper light.* Had a red light been seen by the propeller at any time while she was governing her conduct by the opening green light, the wheel of the propeller would have been put the other way, or that thing would have been done, which a competent and vigilant propeller's crew would have done had a red light been thus seen.

How does it excuse the schooner when her green light was alone seen, and everything was done which it indicated should be done? when her red light was not seen when it should have been, had it been properly placed, if there be any truth in the libellant's allegations or proofs, before the decided change of course, which the schooner made, as already appears but will be more conclusively shown, took place?

III. That the exhibition of a bad light is a most important fault, is of course beyond question. And, that, when such fault is shown to exist, the burden is on the vessel guilty of such fault, to show that the collision would have happened, even

if her light was good, and was in no degree attributable to that fault, these positions are beyond question.

The Continental, 8 *Blatchford*, 3.
The Lion, 1 *Sprague*, 40.
The Anglo Norman, *Newberry*, 492.
Bullock vs. The Lauch, 8 *Law Rep.*, 275.
The Miranda, *Newberry*, 227.
Lowndes on Col., 88.
The Ariadne, 2 *Benedict*, 472, *and* 7 *Blatchford*, 211.

Has this schooner shown that this collision would have happened if her lights had been good? Can any one undertake to say so, when the competent and vigilant crew of the propeller were watching the schooner all the time? and when, if the theory of the libellant's case be true, the red light of the schooner would have been visible, had it been good, long before she made her decided and fatal change of course? Can statutory law and authority, principle and reason, be thus violated with impunity?

IV. The schooner changed her course before her master gave the order to put her wheel hard up. It may have been done without his knowledge. It may have been done without the knowledge of any one except the wheelsman. It is true the wheelsman asserts he did not do it, as is always the case in collision causes. But, both he and the

captain and others on the schooner *swear to things absolutely, which could not have existed had not this change taken place; things, although they are positively sworn to by the leading witnesses on the part of the libellant, the District Court has not even alluded to,* although they are by far the most important facts in the whole case.

The District Court finds in consonance with the proof, that the vessels made each other substantially dead ahead. The District Court finds that the heading of the schooner was about one point more to the southward than the northward heading of the propeller.

The District Court finds in consonance with the proof, that the wheel of the propeller was put a-starboard in the first place, and she kept swinging under a starboard wheel all the while.

The District Court substantially finds that when the captain of the schooner gave the order to his wheelsman to change the course of his vessel, to put her wheel hard a-port, the vessels were several hundred feet apart.

The whole evidence of the schooner's crew is, that this order was given when the vessels were close together, but a few seconds before the collision. (11, 26, 15, 17.)

There was a change of course on the part of the schooner before this.

1. This the whole proof on the part of the propeller shows, for the whole proof, as to the opening green light, and the suddenly exhibited red, shows it.

2. This the finding of the District Court establishes, when it finds the propeller did not port her wheel.

3. This the proof on the part of the libellant, shows most conclusively, as will be soon shown.

It was the claim of the libellant, that the propeller put her wheel a-port and ran off on the schooner's port bow. This the quotations from their testimony about to be made, will show beyond question. *If the course of the schooner had been changed, the appearances would have been the same as if the propeller had put her wheel a-port.* She did not put her wheel a-port as the proof shows, and as the District Court finds. *Therefore the schooner's course must have been changed, at the very time when her crew thought* (and they all might be ignorant of the change except the wheelsman,) *the propeller ported her wheel and run off on the schooner's port bow.* The wheelsman of the schooner shows this more conclusively than any one else.

He says that when he made the change of the wheel under the captain's orders to put the wheel hard a-port, the propeller was not more than a length off, (13,) and this is in consonance with the other proof on the part of the schooner on that precise point, (11, 15, 17,) and yet he says that *before this*, for he says he put the wheel hard up afterwards, under the captain's orders, (14,) the *propeller got three or four points or more on the schooner's port bow;* that the

propeller "*put off to windward sudden, and she got* "*off to windward three or four points, and perhaps* "*more, * * * it took her five seconds to go off* "*to windward, could not tell the time, it was sudden,* "*first saw her dead ahead, and then to windward,* "*she shot suddenly to windward, * * * did not* "*get the wheel hard up then, did afterwards.*" (14.)

The propeller could not have got to windward, even if she had attempted that folly against the indication of the schooner's opening green light, without putting her wheel a-port. This it is proved and found she did not do. She could not have gone off thus suddenly had she tried. What then does this prove beyond question, and what does all the other corroborative testimony on the part of the schooner prove beyond question? and yet the District Court has not noticed this proof! *It proves that at this time, before the master of the schooner gave his order to put the wheel hard a-port, and that at the time and distance apart that the propeller's witnesses show the vessels were when the schooner's red light was first seen, the schooner changed her course, kept away, caused that sudden change of bearing which only her change of helm could cause, and thus brought the propeller on the schooner's port bow.* There is no disputing this. All the proof on both sides shows it.

The proof on the side of the propeller as to the opening green light, the suddenly appearing red, and her own starboard wheel, certainly does. The substantial proof on the part of schooner, the wheelsman's evidence and all, places it beyond doubt.

Stone, the schooner's mate, swears the propeller "must have put her wheel a-port," to have had her appear as she did. (12.) The whole proof shows, and the District Court finds, the opposite to be the fact—that her wheel was put and kept a-starboard. Stone swears that the same appearances would have presented themselves if the schooner had then changed her course, (12,) and this, as the propeller did not port, must have been the fact.

Clements, a witness for the schooner, says the propeller's lights were about four points to windward, (15,) and the captain himself swears that when the propeller's lights were first seen by him they were "outside of a quarter of a mile off," and were almost a point to a point and a half on his weather (port) bow, and then increased to *about four points off his port bow.* (18, 19.)

All this was before he ordered his wheel changed, (19,) and it shows beyond all question precisely what the proof on the part of the propeller shows, as the propeller did not put her wheel a-port, that before the captain of the schooner ordered his wheel a-port, and when the vessels were probably somewhere about a quarter of a mile apart, but certainly at such distance as to make the change fatal, the *wheelsman of the schooner changed her course and kept her away. He did this probably and (the proof would indicate it) without the knowledge of any one on the schooner beside himself. Not knowing it, as the appearances would have been the same in either case, the others may have supposed the schooner kept her*

course, and the propeller ported and ran off on the schooner's port bow. That this last was not so, it is repeated, is proved and found. There is nothing then to show that the schooner did not change her course at the time indicated, except simple assertion that it was not done. This is opposed to all the other evidence in the case.

Well might the captain of the schooner think that the propeller appeared to be steering wild, getting to leeward, and then trying to cross to windward, crossing his bows, etc. (17.) She was not steering wild. She was swinging all the time to port as the proof shows, and the District Court finds, and the change of the schooner's course, made without the captain's orders or knowledge, was the precise thing to deceive him.

Nor could anything be claimed in explanation, on the ground of "leeway." It is a fanciful matter thrown into the case. At most the leeway as found by the District Court, would not make the difference in the courses of the two vessels more than three quarters of a point. The actual difference in their heading, even if the schooner's compasses were true, aside from the question of leeway, was about one point. Their actual headings were east by north half north, and southwest by west half west. (20, 25, 13, 10.) Nothing then connected with "leeway" can reconcile the testimony above referred to, as to the sudden change of bearing off the port bow of the schooner with the idea that she did not change. But, as has been seen, it is

abundantly established and found that the propeller starboarded, and continued to open the green light on her starboard bow. There is no doubt of this. The vessels were running all the time after the green light was seen, on divergent lines—lines actually divergent, notwithstanding any possible leeway. No leeway could bring the vessels together. It needed such decided change of course as brought the schooner's red light into view to do that.

We must utterly disregard all the testimony in this respect, (and in this conection it may be stated that all the evidence shows the schooner had "a good full on," was not close hauled on the wind all the time, (10, 12, 21, 26,) except the assertions that the course was not changed, (for the others of the schooner's crew beside the wheelsman probably did not know it,) or it must be found, upon the proofs on both sides (and can it be doubted after the proof on the part of the propeller?) that the schooner changed her course, at about the time and distance from the moment and point of collision, claimed by the propeller.

Every other thing in the case—the angle of the collision, (though about that, as in all such cases, very little can be exactly known,) for how could the schooner's port bow have been struck, (when the propeller did not port and then starboard, as the libellants claim,) unless she changed her course very considerably?—the utter contradiction and confusion of the witnessess on the part of the schooner, with respect to the appearance of the

steamer's lights—the utter disagreement as to those appearances, the fact that the propeller was seen under the mainboom of the vessel, which was then off on her starboard side, (13,) that the torch-light was shown to leeward of the schooner, (10, 11, 15,) all these things show that the propeller did not port, did not run off on the propeller's port bow, but that the schooner (precisely as the witnesses on the part of the propeller prove she did) at *first kept opening her green light on the propeller's starboard bow, and then changed her course and ran across the propeller's bows, bringing the schooner's red light into view.*

It was the worst change the schooner could make. Had she been further off the propeller could have avoided her. It was a change begun (and this view has escaped the District Court) long before the captain of the schooner ordered a change. *If this change had not been made, it is beyond all question, as the propeller had been and was swinging under her starboard wheel, and the green light was opening on her bow, the collision would not have happened.*

V. That this change of course was most flagrant fault, and that with such fault the schooner cannot recover, but is solely responsible for this collision, is established upon unquestionable authority.

The New Jersey, Olcott, 415.
The New Champion, Abbott Ad. R., 202.
The Oscar, Holt's Rule of the Road, 231.

The David Cannon, Id., 235.
The Thomas Lea, Id., 240.
The Meander, Id., 243.
The Potomac, 8 *Wallace*, 590.
The Queen, 8 Blatchford, 234.

VI. Once more applying the rule of burden of proof, (See *Point Second, III.*,) can this schooner, thus shown to have committed the two faults of carrying bad lights and making such fatal change of course, can she show that this collision would have happened, notwithstanding such faults? If she cannot she is solely responsible for the consequences.

POINT THIRD.

Under the principles stated under the foregoing points, and under every view in which this case can be considered, the decree of Circuit Court should be affirmed.

I. The first *fault*, beyond all possible question, was the schooner's bad light.

That established, there can be no responsibility on the part of the propeller unless she has been affirmatively shown to have committed a *fault* which would have been committed, had the lights of the schooner been good. That cannot be shown. The propeller committed no fault under the indication of the opening green light.

II. The next *fault* was the change of course on the part of the schooner. Having committed two such *faults*, and no *fault* having been proved on the part of the propeller, she cannot be made wholly or partly responsible for this collision, to a party so entirely in fault as was the schooner. Even could it be said with propriety, to say that there might have been a little more change of wheel; or, that perhaps a different change might have been better; or that perhaps speed might have been slackened or stopped, when in the best judgment which could then be operative, even greater speed would have been safer, in that it would have enabled the vessels to run clear of each other; anything else than the analyzation of the testimony in collision cases, and the application of the rules which establish and apply to *faults;* is to substitute the opinions of courts, upon circumstances, when as to the propriety of conduct, opinions must differ as men differ, for rules, the observance or breach of which it is the sole province of the court to consider. It is to say to practical navigators: "Navigate seas to satisfy "differing courts," and not: "Obey the rules which "statute, precedent and reason have, under the "light of experience, established."

III. When it is established, as in this case, that a sail vessel has committed the worst, the only *faults* she could commit, can it be said that she should be absolved from responsibility for such

faults, upon such fanciful claim as is here made with respect to "leeway," or under the stale plea, that change of course (so often made, so uniformly thus attempted to be excused) was only made the instant before the collision, and only to *lessen the force of the blow!* It is of the greatest importance, that sail vessels should be absolutely required to show good lights and keep their courses. Steam vessels cannot avoid them if they do not. It is most confidently believed, that this Court will countenance no such violations of statute, law, and reason, as this sail vessel has been guilty of; that it will not say to sail vessels, as, it is respectfully submitted, is said substantially by the decision of the District Court, in this case: "Carry bad "lights, change your courses, pay no attention to "statute or law, or reason, and yet if in our opinion "the steam vessel, as to which your signal lights "were a deception; and across the course of "which you recklessly threw yourself, might pos-"sibly have been a little more careful, gone a "little slower, formed a different conclusion, in a few "seconds of time, upon the sudden problem your "faults presented, you shall be held entirely fault-"less, and the consequences of your own wrongs "shall in no measure fall upon you!"

It is most confidently believed, that the decree of the Circuit Court, will be, in all things, affirmed.

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